

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 23

STATE BANK OF HARDINSBURG, PETITIONER,

vs.

CHANCEY RAY BROWN AND MARY G. BROWN

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED FEBRUARY 4, 1942.

CERTIORARI GRANTED MARCH 30, 1942.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No.

IN THE MATTER OF CHANCEY RAY BROWN AND
MARY G. BROWN, DEBTORS.

STATE BANK OF HARDINSBURG,

Petitioner,

vs.

CHANCEY RAY BROWN AND MARY G. BROWN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

Index to printed record of proceedings in U. S. District Court	i
Clerk's certificate to printed record of proceedings in U. S. District Court	69
Index to proceedings in U. S. Court of Appeals:	
Placita	71
Appearance of counsel for appellee, filed Mar. 11, 1941	71
Petition to stay proceedings, filed April 21, 1941.	72
Order of April 22, 1941, staying proceedings, etc.	73
Motion of Federal Land Bank of Louisville to be made a party to appeal, filed July 5, 1941.....	74
Order of July 16, 1941, deferring action on motion to be made a party to appeal, etc.	76
Consent of appellant to motion of Federal Land Bank to be made a party to appeal, filed July 17, 1941	77
Motion of counsel for appellant to withdraw, filed Oct. 1, 1941	78
Order of Oct. 1, 1941, granting leave to counsel for appellant to withdraw appearance, etc.	79
Appearance of counsel for appellant, filed Oct. 3, 1941	80
Petition of Federal Land Bank of Louisville to be made a party appellee, filed Oct. 6, 1941.....	81
Order of Oct. 7, 1941, granting petition of Federal Land Bank of Louisville to be made a party appellee, etc.	83
Order of Oct. 15, 1941, taking cause under advisement	85
Opinion by Minton, J., filed Nov. 8, 1941.....	86
Opinion by Major, J., dissenting	90
Judgment reversing, entered Nov. 8, 1941.....	94
Petition to stay mandate, filed Dec. 3, 1941.....	95
Order of Dec. 3, 1941, staying mandate.....	96
Clerk's certificate	97
Order allowing certiorari	98

TRANSCRIPT OF RECORD

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

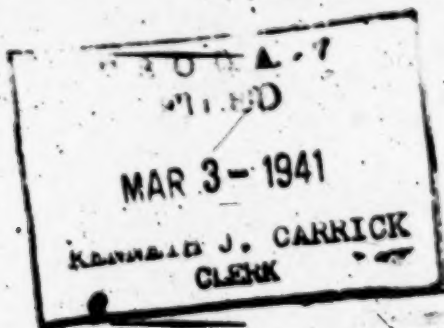
No. 7574

IN THE MATTER OF CHANCEY RAY BROWN AND MARY
G. BROWN, DEBTORS.

CHANCEY RAY BROWN AND MARY G. BROWN,
Appellants,

vs.

STATE BANK OF HARDINSBURG,
Appellee.



Appeal from the District Court of the United States for the
Southern District of Indiana, New Albany Division.

TRANSCRIPT OF RECORD FILED FEB. 1, 1941.

PRINTED RECORD

IN THE

**United States Circuit Court of Appeals
For the Seventh Circuit**

No. 7574

**IN THE MATTER OF CHANCEY RAY BROWN AND MARY
G. BROWN, DEBTORS.**

CHANCEY RAY BROWN AND MARY G. BROWN,
Appellants,

vs.

STATE BANK OF HARDINSBURG,
Appellee.

**Appeal from the District Court of the United States for the
Southern District of Indiana, New Albany Division.**

INDEX.

Placita	1
Petition, filed Apr. 28, 1940.....	1
Statement of Affairs, filed May 28, 1940.....	4
Debtor's Petition under Section 75 of Bankruptcy Act, filed June 4, 1940.....	8
Schedule A—Statement of all Debts of Bankrupt.....	12
Schedule A-1—Statement of all Creditors, etc.....	12
Schedule A-2—Creditors holding securities.....	13
Schedule A-3—Creditors whose claims are un- secured	14
Schedule A-4—Liabilities on Notes, etc.....	15
Schedule A-5—Accommodation paper.....	16
Oath to Schedule A.....	17
Schedule B—Statement of all property of Bank- rupt	17
Schedule B-1—Real Estate	17
Schedule B-2—Personal Property	18
Schedule B-3—Choses in Action	19
Schedule B-4—Property in Reversion, etc.....	20
Schedule B-5—Property claimed as exempt, etc..	21
Schedule B-6—Books, Papers, Deeds, etc.....	22
Oath to Schedule B.....	22
Summary of Schedules A and B.....	23
Motion to strike parts of Bankrupts' schedule, filed Aug. 3, 1940.....	24
Exhibit A—Promissory Note, dated Feb. 19, 1938	27, 42
Exhibit B—Mortgage, dated Feb. 19, 1938.....	27, 43, 48
Exhibit C—Certified copy of Judgment case #10039, Orange County	29
Sheriff's Deed, dated June 1, 1940	34

Motion to correct error in Real Estate, Etc., filed Aug. 22, 1940	35
Amended motion to strike, etc., filed Sept. 10, 1940	37
(Exhibits A & B, indexed under Motion to Strike)	
Exhibit D—Amended Complaint, State Bank of Hardingsburg vs. Brown, et al.	45
Exhibit E—Transcript of proceeding, etc.	50
Special Findings of Fact, filed Nov. 20, 1940	55
Conclusions of Law	58
Order or Decree striking certain Real Estate from Bankrupt's schedules, entered Nov. 20, 1940.	59
Petition for Appeal, filed Dec. 5, 1940	61
Order allowing appeal, etc., entered Dec. 5, 1940	62
Assignment of Errors	63
Motion as to Appeal Bond	64
Order as to Appeal Bond	65
Appeal Bond	66
Fraecipe for Record	67
Clerk's Certificate	68

1 IN THE DISTRICT COURT OF THE UNITED STATES
For the Southern District of Indiana,
New Albany Division.

Pleas in the District Court of the United States for the Southern District of Indiana, at the United States Court House in the City of New Albany, in said District, before the Honorable Robert C. Baltzell, Judge of said District Court.

In the Matter of
Chancey Ray Brown, and
Mary G. Brown,
Debtors. } No. 554 In Bankruptcy.

Be it remembered, that heretofore to wit: at the April Term of said Court on the 28th day of May, 1940, before the Honorable Robert C. Baltzell, Judge of said Court, the following proceedings were had herein, to wit:

Come now the debtors and file voluntary petition under Section 75 of the Bankruptcy Act, which petition is as follows:

2 Debtor's Petition.

Filed
Apr. 28,
1940.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Southern District of Indiana.

In the Matter of
Chancey Ray Brown, joined by } In Bankruptcy.
Mary G. Brown, his wife. } No. 554.

PETITION.

To the Honorable Robert C. Baltzell, Judge of the District Court of the United States for the Southern District of Indiana, New Albany Division.

The Petition of Chancey Ray Brown, joined by Mary G. Brown, his wife, residing at (Street Address) R. F. D. #3, Orleans (County of) Orange, (State of) Indiana, by occupation a farmer engaged in business of farming. (Employ-

er's name and address—or business name and address)

Respectfully Represents: 1. That your petitioner has had his principal place of business [or has resided, or has had _____ domicile] at near Bromer, Orange Co., Indiana, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. That the schedule hereto annexed, marked A [1, 2, 3, 4, 5], and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said Act.

4. That the schedule hereto annexed, marked B [1, 2, 3, 4, 5, 6], and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore Your Petitioner Prays, That he may be adjudged by the Court to be a bankrupt within the purview of said Act.

Chancey Ray Brown,
Mary G. Brown,

Petitioner.

C. R. McBride,
Attorney for Petitioner,
New Albany, Ind.

United States of America, }
State of Indiana, } ss.
County of Floyd.

Oath for Individual.

I, Chancey Ray Brown, joined by Mary G. Brown, my wife, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Chancey Ray Brown,
Mary G. Brown,
Petitioner.

Subscribed and sworn to before me, this 27th day of May, 1940.

(Seal) Charles R. McBride,
Notary Public.
(Official Character.)

My Com. Ex. May 8, 1942.

(All schedules to be filed in triplicate with this petition.)

3 (Note.—Each question should be answered or the failure to answer explained. If the answer is “none,” this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term, “original petition,” as used in the following questions, shall mean the petition filed under section 3b or 4a of chapter III, section 322 of chapter XI, section 422 of chapter XII, or section 622 of chapter XIII.)

Proceedings shall be entitled “In Bankruptcy,” “In Proceedings for—a Composition or Extension,”—an Arrangement,”—a Real Property Arrangement,” or—a Wage Earner Plan,” as the case may be. Rule 5 Paragraph 4.

In proceedings under chapter VIII, X, XI, XII, or XIII, of the Act, unless and until the debtor is adjudicated a bankrupt he shall be referred to as a “debtor.”

Filed
May 28,
1940.

STATEMENT OF AFFAIRS.

(For Bankrupt or Debtor Not Engaged in Business)

Form 2.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana,

New Albany Division.

In the matter of
Chancy Ray Brown,
Bankrupt Debtor.

No. 554.

In Bankruptcy. Farmer-Debtor
under Frazier-Lemke Mora-
torium Act.

Filed May 28, 1940. Albert C. Sogemeier, Clerk.

1. Name and residence?

- a. What is your full name? Chancey Ray Brown.
- b. Where do you now reside? Orange County, Indiana.
- c. Where else have you resided during the six years immediately preceding the filing of the original petition herein? Nowhere else.

2. Occupation and income.

- a. What is your occupation? Farmer.
- b. Where are you now employed? (Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed.) I operate my own farm in Orange County, Indiana.
- c. Have you been in partnership with anyone, or engaged in any business, during the six years immediately preceding the filing of the original petition herein? (If so, give particulars, including names, dates and places.) No. Unless my wife, Mary G. Brown, might be regarded as such.
- d. What amount of income have you received from your trade or profession during each of the two years immediately preceding the filing of the original petition herein? For 1938 my income did not exceed \$650. For 1939, \$600.
- e. What amount of income have you received from

other sources during each of these two years? (Give particulars, including each source, and the amount received therefrom.) None.

3. Income tax returns.

a. Where did you file your last federal and state income tax returns, and for what years? I have filed no Federal or State Income Tax return. Ex. exceed income.

4. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein? (Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.) None.

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when surrendered, or, if transferred, when transferred and the name and address of the transferee.) Nothing of the kind.

5. Books and records.

a. Have you kept books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein? No.

b. In whose possession are these books or records? (Give names and addresses.) None kept.

c. Have you destroyed any books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein? (If so, give particulars, including date of destruction and reason therefor.) No.

6. Property held in trust.

a. What property do you hold in trust for any other person? (Give name and address of each person, and a description of the property and the amount or value thereof.) Nothing of this kind.

7. Prior bankruptcy or other proceedings; assignments for benefit of creditors.

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein? (Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition, arrangement or plan was or was not confirmed.) None.

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee? (If so, give the name and location of the court, the nature of the proceeding, a brief description of the property, and the name of the receiver or trustee.) No.

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein? (If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.) No.

8. Suits, executions and attachments.

a. Have you been party plaintiff or defendant in any suit within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.) Yes. State Bank of Hardinsburg vs. myself and wife. Circuit Court of Orange County, Indiana, Paoli, Indiana.

b. Has any execution or attachment been levied against your property within the four months immediately preceding the filing of the original petition herein? (If so, give particulars, including property seized and at whose suit.) Yes. Under above cited action.

9. Loans repaid.

a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein? (Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship.) International Harvester Company, Chicago, Illinois. Bought a tractor for \$1070. Traded old tractor,

making debt \$750. Paid \$306.59 last year, cancelling debt. Huber Mfg. Co., Marion, Ohio. Original debt \$1250. made in 1935. Paid \$268. last year in final settlement.

10. Transfer of property.

a. What property have you transferred or otherwise disposed of during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.) None.

11. Losses.

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including dates, and the amounts of money or value and general description of property lost.) None.

Chancey Ray Brown,
Bankrupt [or Debtor].

State of Indiana }
County of Floyd } ss.

I, Chancey Ray Brown, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information and belief.

Chancey Ray Brown,
Bankrupt [or Debtor].

Subscribed and sworn to before me this 27th day of May, 1940.

(Seal) Charles R. McBride,
Notary Public.
[Official Character.]

My Commission Expires May 8, 1942.

5. (Entry for May 28, 1940, continued)

Come now the debtors, Chancey Ray Brown and Mary G. Brown, and withdraw their petition filed on May 28, 1940, on account of it being wrongfully filed.

6 And afterwards towit at the April Term of said Court on the 4th day of June, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, towit:

Come now the debtors and file voluntary petition and schedules under Section 75 of the Bankruptcy Act, which petition and schedules are as follows:

Filed
June 4,
1940.

7 DEBTORS' PETITION IN PROCEEDINGS UNDER SECTION 75 OF BANKRUPTCY ACT.

To the Honorable Robert C. Baltzell, Judge of the United States District Court for the Southern District of Indiana:

The petition of Chancey Ray Brown and Mary G. Brown, his wife, of R. F. D. #3, Orleans in the County of Orange and District and State of Indiana, respectively represent:

That they are personally, bona fide engaged primarily in farming operations (or that the principal part of their income is derived from farming operations) as follows:

Farming

that such farming operations occur in the county (or counties) of Orange within said judicial district; that they are insolvent (or unable to meet their debts as they mature); and that they desire to effect a composition or extension of time to pay their debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed, marked "A", and verified by your petitioners' oath, contains a full and true statement of all their debts, and (so far as it is possible to ascertain) the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B", and verified by your petitioners' oath, contains an accurate inventory of all their property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioners pray that their petition may be approved by the Court and proceedings had in accordance with the provisions of said section:

Chancey Ray Brown,

Mary G. Brown,

Petitioners.

C. R. McBride,

Attorney for Petitioners.

New Albany, Indiana.

United States of America, }
Southern District of Indiana. } ss:

We, Chancey Ray Brown and Mary G. Brown, his wife, the Petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information and belief.

Chancey Ray Brown,

Mary G. Brown,

Petitioners.

Subscribed and sworn to before me this 27th day of May, A. D. 1940.

Charles R. McBride,

(Seal)

Notary Public.

My Com. Ex. May 8, 1942.

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Southern District of Indiana.

In the Matter of

Chancey Ray Brown, joined by

Mary G. Brown, his wife.

In Bankruptcy.
No. 554.

PETITION.

To the Honorable Robert C. Baltzell, Judge of the District Court of the United States for the Southern District of Indiana; New Albany Division.

The Petition of (Full Name. No Initials) Chancey Ray Brown, joined by Mary G. Brown, his wife, residing at (Street Address) R. F. D. #3 Orleans, (County of) Orange, (State of) Indiana, by occupation a farmer; [engaged in business] farming. (Employer's name and address—or business name and address)

Respectfully Represents: 1. That your petitioner has had his principal place of business [or has resided, or has had _____ domicile] near Bromer, Orange Co., Indiana, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. That the schedule hereto annexed, marked A [1, 2, 3, 4, 5], and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said Act.

4. That the schedule hereto annexed, marked B [1, 2, 3, 4, 5, 6], and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore Your Petitioner Prays, That he may be adjudged by the Court to be a bankrupt within the purview of said Act.

Chancey Ray Brown,
Mary G. Brown,
Petitioner.

C. R. McBride,
Attorney for Petitioner.

New Albany, Indiana.

United States of America, }
State of Indiana, } ss.
County of Floyd.

Oath for Individual.

I, Chancey Ray Brown, joined by Mary G. Brown, my wife, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Chancey Ray Brown,
Mary G. Brown,
Petitioner.

Subscribed and sworn to before me, this 27th day of May, 1940.

(Seal)

Charles R. McBride,
Notary Public.
(Official Character.)

My Com. Ex. May 8, 1942.

(All schedules to be filed in triplicate with this petition.)

9 Schedule A—Statement of All Debts of Bankrupt.

Schedule A-1.

Statement of all Creditors who are to be paid in Full or to Whom Priority is Secured by Act.

Claims which have priority.

Reference to Ledger or Voucher.

Names of Creditors.

Residences. (If unknown, that fact must be stated.)

Where and When Contracted.

Whether claim is contingent, unliquidated or disputed.

Nature and consideration of the debt, and whether contracted as partner or joint contractor and, if so, with whom.

Amount Due
or Claimed

\$ Cts

- a. Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding \$600 each, earned within three months before filing the petition.

Newton McCart, farm labor, residence my own, 50.00

- b. Taxes due and owing to:

(1) The United States. None.

(2) The State of Indiana, delinquent two years, 639.00

(3) The county, district or municipality of Orange, which is included in above amount.

State of _____

- c. (1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority.

None.

- (2) Rent owing to a landlord who is entitled to priority by the laws of the State of Indiana, accrued within three months before filing the petition, for actual use and occupancy.

Citizens National Bank, Evansville, Ind. 42.00

Total

731.00

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

These schedules must be executed in triplicate.

10

Schedule A-2.

Creditors Holding Securities.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by Act of Congress relating to bankruptcy and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

Reference to Ledger or Voucher.

Name of Creditors.

Residences. (If unknown, that fact must be stated.)

Description of Securities.

When and Where debts were contracted.

Whether claim is contingent, unliquidated or disputed.

Value of Securities Amount Due
or Claimed

	\$	Cts \$	Cts.
Real estate mortgages, joined by wife, State Bank of Hardinsburg, Har- dinsburg, Indiana,			3194.05
Federal Land Bank, Louisville, Ken- tucky,			696.00
Chattle mortgage, my own only, or pos- sibly also joined by my wife, Huntingburg, Indiana, Credit Pro- duction Association, Huntingburg, Indiana,			9.00
Total			4609.05

Chancey Ray Brown,
Petitioner.
Mary G. Brown.

Note.—Give street and number address where possible.

Creditors Whose Claims Are Unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of off-set stated in the schedule of property.]

Reference to Ledger or Voucher.

Names of Creditors.

Residences: (If unknown, that fact must be stated.)

When and Where contracted.

Whether claim is contingent, unliquidated or disputed.

Nature and consideration of the debt; and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.

Amount Due
or Claimed

	\$	Cts.
Home Loan Finance Company, Bedford, Indiana,	270.00	
American Security Company, Paoli, Indiana	120.00	
Bruner Fertilizer Co., Seymour, Indiana	116.00	
C. E. Wimmer, Orleans, Indiana,	16.00	
Rider Service Station, Campbellsburg, Indiana,	11.00	
C. E. Doak (Doak), Bromer, Indiana,	25.00	
Orange County Bank, Paoli, Indiana,	212.00	
Total	770.00	

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Note.—Give street and number address where possible.

12

Schedule A-4!

Liabilities on Notes or Bills Discounted Which Ought to Be Paid by Drawers, Makers, Acceptors, or Indorsers.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to Ledger or Voucher.

Names of holders as far as known.

Residences. (If unknown, that fact must be stated.)

Place where contracted.

Whether claim is disputed.

Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and if so, with whom.

Amount Due
or Claimed

None.

\$ Cts.

Total

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Note.—Give street and number address where possible.

16

Schedule A-5.

13

Schedule A-5.

Accommodation Paper.

[N. B.—The dates of the notes or bills and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker or acceptor or endorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Some particulars as to other commercial paper.]

Reference to Ledger or Voucher.

Names of Holders.

Residence. (If unknown, that fact must be stated.)

Names and residences of persons accommodated.

Places where contracted.

Whether claim is disputed.

Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.

Amount Due
or Claimed

\$ Cts.

None.

Total

Chancey Ray Brown,
Petitioner.
Mary G. Brown.

Oath to Schedule A.

State of Indiana }
 County of Floyd } ss.

I, Chancey Ray Brown joined by Mary G. Brown, his wife, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Subscribed and sworn to before me this 27th day of May, 1940.

(Notarial Seal) Charles R. McBride,
Notary Public.
 (Official Character)

My Commission Expires May 8, 1942.

14 Schedule B—Statement of All Property of
 Bankrupt.

Schedule B-1.

Real Estate.

Location and Description of all real estate owned by Debtor, or held by him.

Incumbrances thereon, if any, and dates thereof.

Statement of particulars relating thereto.

Estimated Value of
 Debtor's Interest

\$ Cts.

A part of the southwest quarter of Section 18 and a part of the northwest quarter of Section 19, all in T. 2 N., R. 2 W.

Also a part of the southwest quarter of Section 19, T. 2 N. R. 2 W., containing in all 125 acres. (Covered by mortgages)

6000.00

Also part of the northeast quarter of Section 5, T. 1 S., R. 2 E., containing 90 acres. (Unencumbered)

400.00

Total 6400.00

These schedules must be executed in triplicate.

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Personal Property.

	\$	Cts.
a. Cash on hand		35.00
b. Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately): None.		
c. Stock in trade in _____ business of _____ at _____ of the value of _____ Stock in Producers Association, Orleans, Indiana		10.00
d. Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz.: Contents of home, household effects		50.00
e. Books, prints and pictures, viz.: None.		
f. Horses, cows, sheep and other animals (with number of each), viz.: Five horses and one colt; five cows; ten shoats, and three spring calves		750.00
g. Automobiles and other vehicles, viz.: One Plymouth, 36 model, been wrecked		50.00
h. Farming stock and implements of husbandry, viz.: Two tractors; two threshing machines; two corn shredders; two binders; two plows; a disk-harrows; a corn-planter; two mowing machines and small implements		1200.00
i. Shipping and shares in vessels, viz.: None.		
j. Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.: None.		
k. Patents, copyrights and trade-marks, viz.: None.		

Schedule B-3.

19

1. Goods or personal property of any other description, with the place where each is situated, viz.:

None.

 Total 2095.00

Note.—If any space is insufficient, annex additional sheets.

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

16

Schedule B-3.

Choses in Action.

 \$ Cts.

- a. Debts due petitioner on open account.
None.
- b. Policies of insurance.
None.
- c. Unliquidated claims of every nature with their estimated value.
None.
4. Deposits of money in banking institutions and elsewhere.
None.

 Total

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

17

Schedule B-4.

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the persons to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the debtor.]

General Interest	Particular Description	Estimated Value of My Interest.
		\$ Cts.
	Interest in land.	
	None.	
	Personal property.	
	None.	
	Property in money, stocks, shares, bonds, annuities,, etc.	
	None.	
	Rights and powers, legacies and bequests.	
	None.	
	Total	
	Amounts Realized from Proceeds of Property Conveyed	
		\$ Cts.

Property heretofore conveyed for benefit of creditors.

None.

What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.

None.

Attorney's Fees.

None.

What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.

Total

Chancey Ray Brown,
Petitioner.
Mary G. Brown.

18

Schedule B-5.

Property Claimed as Exempt From the Operation of the Act of Congress Relating to Bankruptcy.

[Note—Each item of property must be stated, its valuation, and, if real estate, its location, description and present use.]

Valuation

\$ Cts.

1. Property claimed to be exempted by the laws of the United States, with reference to the statute creating the exemption.

None.

2. Property claimed to be exempt by State laws, with reference to the statute creating the exemption.

The petitioner, Chancey Ray Brown, claims as exempt all of the property scheduled B herein, under and pursuant to the laws of the State of Indiana as provided by Section 2-3501 of Burns Revised Statutes of Indiana of 1933, and asks that all of the personal property listed in said schedules be set off to him as exempt property.

Mary G. Brown, wife, is duly and legally domiciled in Northeast Township, Orange County, Indiana, where she resides with her husband, Chancey Ray Brown, and she claims her exemption of \$1000.00 as provided by Section 38-109, Burns Revised Statutes of Indiana, and asks that the same be set off to her.

Total

Chancey Ray Brown,
Petitioner.
Mary G. Brown.

**Books, Papers, Deeds, and Writing, Relating to
Bankrupt's Business and Estate.**

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by parties whose names are hereinafter set forth, with the reasons for their custody of the same.

Books.

None.

Deeds.

The usual deeds to real estate.

Papers.

None.

Chancey Ray Brown,
Petitioner.
Mary G. Brown.

Oath to Schedule B.

United States of America }
State of Indiana } ss.
County of Floyd }

I, Chancey Ray Brown, joined by Mary G. Brown, my wife, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Subscribed and sworn to before me this 27th day of May, 1940.

(Notarial Seal)

Charles R. McBride,
Notary Public.
(Official Character)

My Commission Expires May 8, 1942.

Summary of Schedules A and B.

23

20

Summary of Debts and Assets

(From the statements of the debtor in Schedules A and B)

Schedule A—

1-a	Wages	50.00
1-b (1)	Taxes due United States	(639.00
1-b (2)	Taxes due States	(
1-b (3)	Taxes due counties, districts, municipal- ities	(
1-c (1)	Debts due any person, including the United States, having priority by laws of the United States	
1-c (2)	Rent having priority	42.00
2	Secured claims	4609.05
3	Unsecured claims	770.00
4	Notes and bills which ought to be paid by other parties thereto	
5	Accommodation paper	
	Schedule A, Total	<u>6110.00</u>

Schedule B—

1	Real Estate	6400.00
2-a	Cash on hand	35.00
2-b	Negotiable and non-negotiable instru- ments and securities	
2-c	Stock in trade	10.00
2-d	Household goods	50.00
2-e	Books, prints and pictures	
2-f	Horses, cows and other animals	750.00
2-g	Automobiles and other vehicles	50.00
2-h	Farming stock and implements	1200.00
2-i	Shipping and shares in vessels	
2-j	Machinery, fixtures and tools	
2-k	Patents, copyrights, trademarks	
2-l	Other personal property	
3-a	Debts due on open accounts	
3-b	Policies of insurance	
3-c	Unliquidated claims	
3-d	Deposits of money in banks and else- where	
4	Property in reversion, remainder, ex- pectancy or trust	
5	Property claimed as exempt	\$1000.00
6	Books, deeds, papers	
	Schedule B, Total	<u>8495.00</u>

Chancey Roy Brown,
Petitioner.

Mary G. Brown.

Filed
Aug. 3,
1940.

21 And afterwards to wit at the April Term of said Court on the 3rd day of August, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Comes now Walter S. McIntosh, President of the State Bank of Hardinsburg, and files motion to strike out parts of the bankrupts' schedule, which motion is as follows:

22 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—554) • •

MOTION TO STRIKE OUT PARTS OF BANKRUPTS' SCHEDULE.

To the Honorable Robert C. Baltzell, Judge of the District Court of the United States:

Comes now Walter S. McIntosh, who being first duly and legally sworn according to law, upon his oath, says that he is the president of State Bank of Hardinsburg, a banking corporation of the Town of Hardinsburg, Washington County, Indiana, organized and conducting business under and by virtue of the laws of the State of Indiana, and that he is duly authorized to make this motion for and on behalf of said corporation.

He now, therefore, moves the court to strike out of the schedule of said bankrupt petitioners all of that portion thereof which relates to the real estate of said petitioners which is thus described: A part of the south west quarter of section 18 and a part of the northwest quarter of section 19 all in town 2 north, r 2 w. Also a part of the south west quarter of section 19, t. 2 n. r. 2 w, Containing in all 125 acres, for the reason that said described real estate is not the property of said bankrupt petitioners or either of them but that the same is the property of State Bank of Hardinsburg, petitioner herein.

And said affiant to substantiate the said claim of said Bank and for the purpose of showing the truth of the statement that said bank is the owner of said described real estate makes the following statement under his oath afore-said and files herewith certain exhibits which are properly marked, Viz: That on the 19th day of February, 1938,

23 the Bankrupt Petitioners became indebted to the State

Bank of Hardinsburg, in the sum of Two thousand Five Hundred Dollars, the truth of which is evidenced by their certain promissory note, for said sum and of said date, a copy of which note is filed with this motion and marked exhibit A. That for the purpose of securing the payment of said note, said Bankrupt Petitioners executed to said Bank their certain mortgage on the following described real estate in Orange County, in the State of Indiana, to wit: A part of the southwest quarter of section eighteen and a part of the north-west quarter of section nineteen, all in township two (2) north, range two east, described as follows Viz: Beginning at a point 35.68 rods north of the south east corner of the south-west quarter of section eighteen, township two north, range two east and running ninety-nine rods west, thence south 82.77 rods, thence west seventy-four rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the north-west quarter of section nineteen, township two north, range two east, thence north 111.18 rods to the place of beginning containing eighty eight acres, more or less. Also a part of the south east quarter of section nineteen township two north and range two east, described as follows, to-wit: Beginning at the north-east corner of said south east quarter and running thence west $93\frac{1}{4}$ rods, more or less to a point which is $66\frac{1}{4}$ rods east of the north-west corner of said quarter section thence south sixty rods, thence east to the east line of said section, thence north sixty rods to the place of beginning, containing thirty-seven acres, more or less, which said mortgage was made subject to a mortgage for the sum of \$725.00 in favor of the Federal Land Bank of Louisville, Kentucky, which said described real estate was then the only real estate in said sections so owned by the said Bankrupt Petitioners and is the identical real estate which said petitioners have undertaken to describe in their Bankrupt petition and schedule herein. A copy of which said mortgage is filed herewith, made part hereof and marked exhibit B.

24 Your affiant further says upon his oath aforesaid that afterwards to-wit: on the 4th day of March, 1939 the said State Bank of Hardinsburg filed their certain proceedings in the Orange Circuit Court of Orange County, Indiana, for the collection of said note and the foreclosure of said mortgage, that judgment was rendered in said cause of action and said mortgage ordered foreclosed to pay and satisfy said judgment by said court on Nov. 20, 1939. A

decree was issued and said land sold to said Bank on the 25th day of April, 1940 and a deed executed and delivered to the said Bank on the 1st day of June, 1940, all before the filing of the petition of bankruptcy by the Bankrupt Petitioners herein which said petition was filed by them on the 4th day of June, 1940.

That by reason of said sale and the execution of said deed by the sheriff of Orange County, Indiana the said Bank of Hardinsburg became the owner of the real estate so described in said Bankrupts' petition prior to the time of the filing of their petition.

Petitioner further says that the description of said real estate is erroneous in this to-wit: that the said schedule so filed by said bankrupt petitioners recite the fact that said real estate is situate in range two west when in truth and in fact the same is located in range two east.

That a certified copy of said judgment is filed herewith, made part hereof and marked exhibit C.

That the facts herein recited show that before the filing of the bankrupts petition the said State Bank of Hardinsburg was the owner of the real estate described in said Bankrupts' petition and was not the property of said bankrupts, and that the recital that the said bankrupts were indebted to said bank on account of the execution of said note and mortgage are untrue.

Wherefore said affiant, for and on behalf of said bank prays that said statement so made by said Bankrupts relative to said indebtedness and in relation to the ownership by them of said real estate be stricken from their said schedule and that the same be not considered in determining the relations between said bankrupts and the said State Bank of Hardinsburg, and for all other proper relief.

Walter S. McIntosh,
*President of the State Bank of
Hardinsburg.*

Subscribed and sworn to before me, this 31st day of July, 1940.

(Seal)

Charles R. Ratts,
Notary Public.

Com. Exp. 9/29/42.

EXHIBIT A.

Hardinsburg, Ind., February 19, 1938.

One Year after date, I, we, or either of us promise to pay to the order of State Bank of Hardinsburg Two thousand five hundred and no/100 Dollars negotiable and payable at the State Bank of Hardinsburg, Hardinsburg, Indiana, without any relief whatever from Valuation or Appraisement Laws of the State of Indiana, for value received, with interest at 6 per cent. per annum payable semi-annually from date until maturity ~~and 8% per annum after maturity~~ until paid; and Attorney's Fees. The drawer and endorsers severally waive presentment for payment, protest, notice of protest and non-payment of this note.

Chancey R. Brown.

Mary G. Brown.

No. 8987

Due Feb. 19, 1939.

EXHIBIT B.

Mortgage.

This Indenture Witnesseth, That Chancey R. Brown and Mary G. Brown, his wife, of Orange County in the State of Indiana, Mortgage and Warrant to State Bank of Hardinsburg, of Washington County, in the State of Indiana, the following described real estate in Orange County in the State of Indiana, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north and range 2 east, described as follows,

to-wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{2}$ rods more or less to a point which is $66\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less..

This mortgage is made subject to a mortgage on the last above described real estate in the sum of approximately Seven Hundred Twenty Five (\$725.00) Dollars, in favor of the Federal Land Bank of Louisville, Kentucky which mortgage grantees assume and agree to pay.

to secure the payment, when the same shall become due, of one certain promisory note bearing even date herewith, for the sum of Twenty Five Hundred (\$2500.00) Dollars, executed by Chancey R. Brown and Mary G. Brown, husband and wife, and payable to the order of the State Bank of Hardinsburg, of Hardinsburg, Indiana, One Year after date, with interest thereon at the rate of six per cent (6%) per anum, payable Semi-annually; said note providing for the payment of expenses of collection, including attorney fees and waiving relief from valuation and appraisement laws.

28 And the mortgagors expressly agree to pay the sum of money above secured, without relief from valuation or appraisement laws; and upon failure to pay any one of said notes, or any part thereof, at maturity, or the interest thereon, or any part thereof, when due, or the taxes or insurance as hereinafter stipulated, then all of said notes are to be due and collectible, and this mortgage may be foreclosed accordingly. And it is further expressly agreed, that until all of said notes are paid, said mortgagors will keep all legal taxes and charges against said premises paid as they become due, and will keep the buildings thereon insured for the benefit of the mortgagee, as their interest may appear, and the policy duly assigned to the mortgagee, to the amount of Two Thousand (\$2000.00) Dollars, and failing to do so, said mortgagee, may pay said taxes or insurance, and the amount so paid, with 6 per cent interest thereon, shall be a part of the debts secured by this mortgage.

In Witness Whereof, the said mortgagors have hereunto set their hands and seals this 19th day of February, 1938.

Chancey R. Brown (Seal)

Mary C. Brown (Seal)

State of Indiana }
 Washington County } ss.

Before me, the undersigned, a Notary Public in and for said County, this 19th day of February, 1938, came Chancey R. Brown and Mary G. Brown, husband and wife, and acknowledged the execution of the foregoing instrument.

Witness my hand and Notarial Seal.

Frances Porter,

(Seal)

Notary Public.

Comm. Exp. Dec. 15, 1940.

29

EXHIBIT C.

State Bank of Hardinsburg
 #10039 vs.
 Chancey R. Brown, Mary G.
 Brown.

Come again the parties by their attorneys as heretofore and this cause now coming on for trial the same is submitted to the court for trial without the intervention of a jury. And the court having heard the evidence and being sufficiently advised in the premises finds for the defendant Central Rubber & Supply Co. and that there is due said defendant from the defendant Chancey R. Brown on the judgment set out in the complaint the sum of fifty dollars (\$50.00) from the sale of the real estate belonging to Chancey R. Brown without relief from valuation and appraisement laws. Which said debt and claim of the said defendant is a lien against the real estate hereinafter described, owned by Chancey R. Brown, and herein sought to be foreclosed, superior to the claim and debt of the defendant Orange County Bank and of the claim and debt of the plaintiff hereinafter found and determined.

The court further finds for the plaintiff on its complaint herein that there is due the plaintiff from the defendants Chancey R. Brown and Mary G. Brown on the note herein sued on the sum of \$2762.50 and the further sum of \$170.00 as a fee for its attorney, a total of \$2932.50, all without relief from valuation and appraisement laws; that said sums

are secured by the mortgage sought to be foreclosed by the complaint; that said mortgage was duly recorded in the office of the recorder of Orange County, Indiana, on the 23rd day of February 1938 and that said plaintiff is entitled to have said mortgage foreclosed against the defendants Chancey R. Brown and Mary G. Brown. Which said debt and claim of the said plaintiff herein is second and junior to the claim and debt of the defendant Central Rubber & Supply Co. but is superior to the debt and claim of the 30 defendant Orange County Bank. The court further finds for the defendant Orange County Bank as alleged in the complaint herein and that there is due said defendant from the defendant Chancey R. Brown and Mary G. Brown on the judgment set out in said complaint the sum of \$211.55 without relief from valuation and appraisement laws. Which said claim and debt of the said defendant Orange County Bank is second and junior to the debt and claims of both the defendant Central Rubber & Supply Co. and the plaintiff herein.

It is therefore considered and adjudged by the court that the defendant Central Rubber & Supply Co. recover of and from the defendant Chancey R. Brown the sum of \$50.00 together with its costs herein laid out and expended and taxed at _____ dollars, without relief from valuation and appraisement laws, the said judgment to bear interest at the rate of six per cent per annum from the date of the rendition thereof.

It is therefore further considered and adjudged by the court that the defendant Orange County Bank recover of and from the defendant Chancey R. Brown and Mary G. Brown the sum of \$211.55 together with its costs herein laid out and expended and taxed at _____ dollars, without relief from valuation and appraisement laws, the said judgment to bear interest at the rate of six per cent per annum from the 13 day of September, 1938.

It is further considered and adjudged by the court that the plaintiff recover of and from the defendants Chancey R. Brown and Mary G. Brown the sum of \$2932.50, and also its costs and charges in this case laid out and expended, taxed at _____ dollars, without any relief whatever from valuation laws, the judgment to bear interest at the rate of six per cent per annum from the date of the rendition thereof until paid.

31 And it is further ordered, considered and adjudged by the court that the equity of redemption of the defendants Chancey R. Brown and Mary G. Brown, and all persons claiming by, through or under them in and to said mortgaged premises, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north and range 2 east, described as follows, to-wit: beginning at the northeast corner of said southeast quarter and running west 93 $\frac{1}{4}$ rods more or less to a point which is 66 $\frac{3}{4}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

be and the same is hereby forever barred and foreclosed, and that said real estate and all of the right, title, interest and claim of said defendants Chancey R. Brown and Mary G. Brown and all persons claiming from, under or through them in and to the same, or so much thereof as may be necessary for said purpose shall be sold by the sheriff of this county as lands are sold on execution; and the process arising from said sale, the sheriff is ordered and directed to apply in the manner following, to-wit: First, the payment of all the costs accrued and the costs of said sale.

Second, to the payment of the amount found due the defendant Central Rubber & Supply Co. from Chancey R. Brown herein being the amount of the judgment herein, before rendered, together with interest from this date.

Third, to the payment of the amount found due the plaintiff herein, being the amount of the judgment heretofore rendered, together with interest from this date.

Fourth, to the payment of the amount found due the
32 defendant Orange County Bank herein, being the

amount of the judgment hereinbefore rendered, together with interest from this date, a total of \$226.35.

The overplus if any there be, remaining after the payment of the foregoing judgments, interest and costs, to be paid by the sheriff to the Clerk of this Court for the use of the parties lawfully authorized to receive the same; and in the event said mortgaged property shall fail to sell for a sum sufficient to pay and satisfy said judgments, principals, interest and costs, the residue thereof remaining unpaid shall be levied of the goods and chattels, lands and tenements of the defendants Chancey R. Brown and Mary G. Brown, subject to execution, and sale thereof shall be made without relief from valuation and appraisement laws.

It is further ordered by the court, that a duly certified copy of this decree under the hand of the Clerk and the seal of this court, shall be sufficient authority to the Sheriff to execute the same.

O. K. J. L. Tucker.

State of Indiana }
County of Orange } ss.

I, William O. Ritter, Clerk of the Orange Circuit Court, do hereby certify that the above and foregoing is a true and complete copy of the proceedings had in said cause on November 20, 1939, and the same appears of record now on file in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court this the 5th day of March, 1940, at Paoli, Indiana.

(Seal)

William O. Ritter,
Clerk Orange Circuit Court.

SHERIFF'S DEED.

This Conveyance, made this 1st day of June, 1940, Witnesseth: That Noble Ellis, as Sheriff of Orange County, in the State of Indiana, by virtue of a Certificate of Purchase issued upon a sale by virtue of a Decree issued out of the Circuit Court of Orange County, in the 42nd Judicial Circuit of the State of Indiana, upon a judgment rendered by the Orange Circuit Court in the 42nd Judicial Circuit of the State of Indiana wherein State Bank of Hardinsburg was plaintiff and Chancey R. Brown and Mary G. Brown were defendant, Conveys to State Bank of Hardinsburg, of Washington County in the State of Indiana, for sum of Three Thousand (\$3,000.00) Dollars, all the following described Real Estate in Orange County, in the State of Indiana, to-wit:

A part of the south west quarter of section eighteen (18), and a part of the north-west quarter of section nineteen (19), all in township two (2) north range two (2) east, bounded as follows: Beginning at a point 35.68 rods north of the south east corner of the south west quarter of section 18, township 2 north, range 2 east, and running ninety-nine (99) rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section nineteen, same town and range, thence north 111.18 rods to the place of beginning, containing 88 acres more or less.

Also a part of the south east quarter of section 19 in township 2 north, range 2 east, described as follows, to-wit: Beginning at the north west corner of said south east quarter and running thence west $93\frac{1}{2}$ rods more or less to a point which is $66\frac{1}{2}$ rods east of the north west corner of said quarter section, thence south sixty rods, thence east to the east line of said section, thence north sixty rods to the place of beginning, containing 37 acres, more or less.

Noble Ellis,
Sheriff, Orange County, Indiana.

D. F. R. 300.

Affidavit.

State of Indiana }
 Orange County } ss.

Before me, the undersigned Clerk of the Orange Circuit Court in and for said County and State, this 1st day of June 1940 personally came Noble Ellis, Sheriff of Orange County, Indiana, and as such Sheriff acknowledged the execution of the annexed Deed.

Witness my hand and official Seal.

(Seal)

William O. Ritter,
 Clerk, Orange Circuit Court, Ind.

10206

Sheriff's Deed

Noble Ellis, Sheriff
 of Orange County, Indiana
 to

State Bank of Hardinsburg
 Indexed compared

Received for records the 1st day of June 1940 at 10:30 o'clock A. M. and recorded in Record 85 page 361.

Garrett Ferguson,
 Recorder of Orange County.

Duly entered for Taxation this 1 day of June, 1940.

A. R. Gassaway,
 Auditor of Orange County, Ind.

34 State of Indiana }
 Orange County } ss.

I, Garrett Ferguson, do hereby certify that I am the duly elected, qualified, and acting Recorder of Orange County, state of Indiana; and I further certify that the above and foregoing deed is a true, exact, and complete copy of the deed which is recorded in my office in deed record 85 at page 361.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this, the 2 day of August, 1940, at Paoli, Indiana.

(Seal)

Garrett Ferguson,
 Recorder, Orange County, Indiana.

35 And afterwards to wit at the April Term of said Court on the 22nd day of August, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors, by their attorney Charles R. McBride, and file motion in two paragraphs to correct Scrivener's error in description of real estate and to dismiss plaintiff's motion to strike vital real estate from petitioners' schedule, which motion is as follows:

36 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana,

New Albany Division.

In the Matter of
Chancey Ray Brown,
Bankrupt-Debtor.

No. 554. In Bankruptcy.
Farmer-Debtor under
Frazier-Lemke Act.

State Bank of Hardinsburg
vs.
Chancey R. Brown, Mary G.
Brown.

No. 10039.
Re: Mortgage foreclosure,
Orange Circuit Court.

Hon. Robert C. Baltzell, Judge:

MOTION OF DEBTOR-DEFENDANTS—IN TWO PARAGRAPHS—TO CORRECT SCRIVENOR'S ERROR IN DESCRIPTION OF REAL ESTATE—TO DISMISS PLAINTIFF'S MOTION TO STRIKE VITAL REAL ESTATE FROM PETITIONERS' SCHEDULE.

1. These petitioners would have no motive and obviously had no intention to misdescribe the real estate owned and mortgaged by them as being twenty four miles west of its actual location, the description Range 2 West was a regrettable scrivener's error, which misled nobody, and, therefore, they move that where the description of real estate appearing in debtors' schedules cause the same to read "R. 2 W.", such schedules be corrected to read R. 2 E., removing this confusion from these proceedings.

Filed
Aug. 22
1940.

2. These defendants move that plaintiff's motion to strike real estate, which is vital to an equitable adjudication of this proceeding in Bankruptcy under the benevolent provisions of the Frazier-Lemke Moratorium Act of the Congress, which striking would work grave injustice and potential harm to other creditors, be dismissed for reasons as follows, to wit:

(a) The initiation of the foreclosure proceedings in the Orange County Circuit Court, as disclosed by the certified copy of the record filed in support of the pending motion to strike, is **fatally** defective in failing to make all parties in interest defendants. Whereas, the alleged judgment of the court recites that the Central Rubber & Supply Company, unlocated, is a defendant, the Orange County Bank,

37 indefinitely located, is a defendant, neither was named as such in plaintiff's complaint; and it is not shown, of record, that they had their day in court, though the judgment names them as prior and subordinate lien holders, which suggests that they may have appeared and defended.

(b) The certified copy of mortgage given to the plaintiff by the defendants named in the complaint, recites that it is subsequent in time and inferior in equities to a prior mortgage held by the Federal Land Bank of Louisville, Kentucky, reciting further, quote, "which mortgage grantees assume and agree to pay", said Bank was omitted as a party defendant, also omitted as a party in interest from the judgment of the state court, raising the implication of payment of said prior mortgage, though inquiry made by the undersigned of said mortgagee discloses that said loan, #8914 on the records of the Federal Land Bank, has not been discharged and is being liquidated by the mortgagors in accordance with its terms, to the entire satisfaction of the mortgagee.

(c) In view of the foregoing recital of facts, the judgment of the state court, entered in this foreclosure action, was grossly defective in that the court entertained a foreclosure suit which omitted to name as a defendant a vital party in interest, and, without its day in court, entered judgment without making mention of such prior lien holder.

(d) The certified copy of the alleged deed made by the Sheriff is so clumsily phrased as to suggest very great haste, evidently, with which it was drawn, executed and filed for record, all in one day, in order to antedate some

anticipated activity, and became fatally defective in that it omitted to recite appurtenances, was not made subject to existing liens, tax and otherwise, and fails to disclose that it was examined and approved by the Court.

Moreover, No. 554 was initiated in May, 1940, of which action the plaintiff had knowledge, the debtors (mortgagors) are in possession of the real estate involved in this proceeding, an order restraining any action by the Sheriff, and others, relative thereto has been issued, and the debtor-mortgagors cannot be dispossessed without approval of the Federal courts, which it is confidently assumed will be withheld. See *Kalb et ux. v. Feuerstein et ux.* 308 U. S. 433. (See also, *Wright v. Union Central Life Insurance Company*, 304 U. S. 508; and *McCulloch v. Schafer*, 100 F. 2d 939).

Respectfully submitted,

(Signed) C. R. McBride,

Attorney.

38. And afterwards to wit at the April Term of said Court on the 10th day of September, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Filed
Sept. 10,
1940.

Comes now the petitioner, State Bank of Hardinsburg, by its attorney, Frank S. Houston, and files an amended motion in the above entitled cause, which amended motion is as follows:

39 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Captions—554 & 10039) • •

AMENDED MOTION TO STRIKE OUT PARTS OF BANKRUPT'S SCHEDULE.

1. Comes now Walter S. McIntosh, who being first duly and legally sworn according to law, upon his oath, says that he is the president of State Bank of Hardinsburg, a banking corporation of the Town of Hardinsburg, Washington County, Indiana, organized and conducting business under and by virtue of the laws of the State of Indiana, and that he is duly authorized to make this motion for and on behalf of said corporation.

2. He now, therefore, by way of amended motion moves the court to strike out of the schedule of said bankrupt petitioners all of that portion thereof which relates to the real estate of said petitioners which is thus described: A part of the south west quarter of section 18 and a part of the northwest quarter of section 19 all in town 2 north, r 2 w. Also a part of the south west quarter of section 19, t. 2 n. r. 2 w. Containing in all 125 acres, for the reason that said described real estate is not the property of said bankrupt petitioners or either of them but that the same is the property of State Bank of Hardinsburg, petitioner herein.

And said affiant to substantiate the said claim of said Bank and for the purpose of showing the truth of the statement that said bank is the owner of said described real estate makes the following statement under his oath aforesaid and files herewith certain exhibits which are properly marked, viz.: That on the 19th day of February, 1938, the Bankrupt Petitioners became indebted to the State Bank of Hardinsburg, in the sum of Two Thousand Five Hundred Dollars, the truth of which is evidenced by their certain promissory note, for said sum and of said date, a copy of which note is filed with this motion and marked Exhibit A. That for the purpose of securing the payment of said note said Bankrupt Petitioners executed to said Bank their certain mortgage on the following described real estate, in Orange County, in the State of Indiana, to wit: A part of the southwest quarter of section eighteen and a part of the north-west quarter of section nineteen, all in township two (2) north, range two east, described as follows, viz.: Beginning at a point 35.66 rods north of the south east corner of the south-west quarter of section eighteen, township two north, range two east and running ninety-nine rods west, thence south 82.77 rods, thence west seventy-four rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the north-west quarter of section nineteen, township two north, range two east, thence north 111.18 rods to the place of beginning containing eighty eight acres, more or less. Also a part of the south east quarter of section nineteen township two north and range two east, described as follows, to-wit: Beginning at the north-east corner of said south east quarter and running thence west 93½ rods, more or less to a point which is 66½ rods east of the north-west corner of

said quarter section, thence south sixty rods, thence east to the east line of said section, thence north sixty rods to the place of beginning, containing thirty-seven acres, more or less, which said mortgage was made subject to a mortgage for the sum of \$725.00 in favor of the Federal Land Bank of Louisville, Kentucky, which said described real estate was then the only real estate in said sections so owned by the said Bankrupt Petitioners and is the identical real estate which said petitioners have undertaken to describe in their Bankrupt petition and schedule herein. A copy of which said mortgage is filed herewith, made part hereof and marked Exhibit B.

41 Your affiant further says upon his oath aforesaid that afterwards to-wit: on the 4th day of March, 1939 the said State Bank of Hardinsburg filed their certain proceedings in the Orange Circuit Court of Orange County, Indiana, for the collection of said note and the foreclosure of said mortgage.

3. That a certified copy of said complaint in foreclosure is filed herewith, made part hereof and marked Exhibit C.

4. That afterwards, to-wit: On the 25th day of September, 1939, the plaintiff filed their amended complaint wherein Orange County Bank and Central Rubber & Supply Company were made parties, and all parties appeared by counsel.

5. A certified copy of said amended complaint is filed herewith, made part hereof and marked Exhibit D.

6. That on the 20th day of November, 1939, judgment of foreclosure was rendered in said cause of action, and said mortgage ordered foreclosed and said land sold, to pay and satisfy said judgment. All of which is shown by the transcript of the proceedings to foreclose said mortgage, which transcript is filed herewith, made part hereof and marked Exhibit E.

A decree of foreclosure was issued and said land sold to said Bank on the 25th day of May, 1940 and a deed executed and delivered to the said Bank on the 1st day of June, 1940, all before the filing of the petition in bankruptcy by the Bankrupt Petitioners herein which said petition was filed by them on the 4th day of June, 1940.

That by reason of said sale and the execution of said deed by the sheriff of Orange County, Indiana, the said Bank of Hardinsburg became the owner of the real estate so described in said Bankrupts' petition prior to the time of the filing of their petition.

Petitioner further says that the description of said real estate is erroneous in this to-wit: that the said schedule so filed by said bankrupt petitioners recite the fact that said real estate is situate in range two west when in truth 42 and in fact the same is located in range two east.

That the facts herein recited show that before the filing of the bankrupts petition the said State Bank of Hardinsburg was the owner of the real estate described in said Bankrupts' petition and was not the property of said bankrupts', and that the recital that the said bankrupts' were indebted to said bank on account of the execution of said note and mortgage are untrue.

Wherefore said affiant, for and on behalf of said bank prays that said statement so made by said Bankrupts' relative to said indebtedness and in relation to the ownership by them of said real estate be stricken from their said schedule and that the same be not considered in determining the relations between said bankrupts and the said State Bank of Hardinsburg, and for all other proper relief.

Walter S. McIntosh,
*President of the State Bank of
Hardinsburg.*

Subscribed and sworn to before me, this 6th day of September, 1940.

Charles R. Ratts,
Notary Public.

(Seal)

Com. Exp. 9/29/42.

43

EXHIBIT "C".

State of Indiana, }
 Orange County, } ss.

IN THE ORANGE CIRCUIT COURT,

February Term, 1939.

State Bank of Hardinsburg }

vs.

Chancey R. Brown,
 Mary G. Brown. }

The plaintiff complains of the defendants and for cause of action alleges that the plaintiff is a banking corporation duly and legally organized and conducting business under and by virtue of the banking laws of the State of Indiana; that on the 19th day of February, 1938 the said defendants became indebted to plaintiff in the sum of Twenty Five Hundred Dollars (\$2500.00) by their said promissory note of that date, a copy of which said note is filed herewith, made part hereof and marked Exhibit "A".

Plaintiff further avers that to secure the payment of said note, the defendants did on said date, execute and deliver to plaintiff their said mortgage of that date by which they conveyed to plaintiff the following described real estate in the county of Orange, in the State of Indiana, to-wit:

A part of the southwest quarter of Section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north, range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{4}$ rods more or less
 44 to a point which is $66\frac{1}{4}$ rods east of the northwest cor-

ner of said quarter section, thence south 60 rods thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

That said mortgage was duly entered for record in the office of the Recorder of Orange County, Indiana and was, on the 23rd day of February, 1938, duly recorded in Mortgage Record 43 at pages 303-304, a copy of which said mortgage is filed herewith, made part of this complaint and marked Exhibit "B".

That there is now due and unpaid on said mortgage, the sum of Twenty Six Hundred Fifty Dollars (\$2650.00).

That said note provides for the payment of attorney fees and a reasonable attorney fee for plaintiff's attorney herein would be One Hundred Sixty Dollars (\$160.00).

Wherefore, plaintiff sues and demands judgment for Three Thousand Dollars (\$3000.00) and ask that said mortgage may be foreclosed and said real estate be ordered sold to pay and satisfy plaintiff's said claim and debt, for costs and for all other proper relief.

Frank S. Houston,
Attorney for Plaintiff.

EXHIBIT "A".

Hardinsburg, Ind. February 19, 1938

\$2500.00

One Year after date, I, we, or either of us promise to pay to the order of

Bank of Hardinsburg

Two thousand five hundred and no/100.....Dollars
Negotiable and payable at the Bank of Hardinsburg, Hardinsburg, Indiana, without any relief whatever from Valuation and Appraisement Laws of the State of Indiana, for value received, with interest at 6 per cent, per annum payable semi-annually, from date until maturity and 8% per annum after maturity until paid, and Attorney's Fees. The drawer and endorsers severally waive presentment for payment, protest, notice of protest and non payment of this note.

Chancey R. Brown
Mary G. Brown

Secured by Real estate Mortgage.

No. 8987

Due Feb. 19, 1939

EXHIBIT "B".

Mortgage.

This Indenture Witnesseth, That Chancey R. Brown and Mary G. Brown, his wife, of Orange County in the State of Indiana, Mortgage and Warrant to State Bank of Hardinsburg, of Washington County in the State of Indiana, the following described real estate in Orange County in the State of Indiana, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north, and range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{2}$ rods more or less to a point which is $66\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning, containing 37 acres more or less.

This mortgage is made subject to a mortgage on the last above described real estate in the sum of approximately Seven Hundred Twenty Five (\$725.00) Dollars, in favor of the Federal Land Bank of Louisville, Kentucky which mortgage grantees assume and agree to pay. to secure the payment, when the same shall become due, of one certain promissory note bearing even date herewith, for the sum of Twenty-five Hundred (\$2500.00) Dollars, executed by Chancey R. Brown and Mary G. Brown, husband and wife, and payable to the order of the State Bank of Hardinsburg, of Hardinsburg, Indiana, One Year after date, with interest thereon at the rate of six per cent (6%) per annum, payable semi-annually said note providing for the payment of expenses of collection, including attorney

fees and waiving relief from valuation and appraisal laws.

And the mortgagors expressly agree to pay the sum of money above secured, without relief from valuation or appraisal laws; and upon failure to pay any one of said notes, or any part thereof, at maturity, or the interest thereon, or any part thereof, when due, or the taxes or insurance as hereinafter stipulated, then all of said notes are to be due and collectible, and this mortgage may be foreclosed accordingly. And it is further expressly agreed, that until all of said notes are paid, said mortgagors will keep all legal taxes and charges against said premises paid as they become due, and will keep the buildings thereon insured for the benefit of mortgagee, as their interest may appear, and the policy duly assigned to the mortgagee, to the amount of Two Thousand (\$2000.00) Dollars, and failing to do so, said mortgagee may pay said taxes or insurance, and the amount so paid, with 6 per cent interest, shall be a part of the debt secured by this mortgage.

In Witness Whereof, the said mortgagors have hereunto set their hands and seal this 19th day of February, 1938.

Chancey R. Brown (Seal)

Mary G. Brown (Seal)

State of Indiana, }
Washington County. } ss.

Before me, the undersigned, a Notary Public in and for said County, this 19th day of February, 1938, came Chancey R. Brown and Mary G. Brown, husband and wife, and acknowledged the execution of the foregoing instrument.

Witness my hand and Notarial Seal.

(Seal)

Frances Porter,
Notary Public.

Com. Exp. Dec. 15, 1940.

48 State of Indiana, }
County of Orange. } ss.

I, William O. Ritter, Clerk of the Orange Circuit Court, do hereby certify that the foregoing is a true and complete copy of the complaint filed March 4, 1939, in said court in the cause of the State Bank of Hardinsburg vs. Chancey R. Brown, *et al.*, #10039.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Paoli, Indiana, this the 3rd day of September, 1940.

(Seal)

William O. Ritter,
Clerk Orange Circuit Court.

49

EXHIBIT "D".

State of Indiana, }
Orange County. } ss.

IN THE ORANGE CIRCUIT COURT,

September Term, 1939.

State Bank of Hardinsburg	} 10039
vs.	
Chancey R. Brown, Mary G. Brown,	
Orange County State Bank, Central Rubber & Supply Company.	

The plaintiff complains of the defendant and for cause of action alleges that the plaintiff is a banking corporation duly and legally organized and conducting business under and by virtue of the banking laws of the State of Indiana; that on the 19th day of February, 1938 the defendants, Chancey R. Brown and Mary G. Brown became indebted to this plaintiff in the sum of twenty-five hundred dollars (\$2500.00) by their certain promissory note, of that date, a copy of which said note is filed herewith, made part of this complaint and marked exhibit A.

The plaintiff further avers that to secure the payment of said note, the defendants did on said date, execute and deliver to plaintiff their said mortgage of that date by

which they conveyed to plaintiff the following described real estate in the county of Orange, in the State of Indiana, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, 50 more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north, range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{2}$ rods more or less to a point which is $66\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

That said mortgage was duly entered for record in the office of the Recorder of Orange County, Indiana and was, on the 23rd day of February, 1938, duly recorded in Mortgage Record 43 at pages 303-304, a copy of which said mortgage is filed herewith, made part of this complaint and marked Exhibit "B".

That there is now due and unpaid on said mortgage, the sum of Twenty Six Hundred Fifty Dollars (\$2650.00).

That said note provides for the payment of attorney fees and that a reasonable attorney fee for plaintiff's attorney herein would be One Hundred Sixty Dollars (\$160.00).

Plaintiff further says that on the 22nd day of September 1930 the defendant Central Rubber and Supply Company obtained a judgment against the defendant Chancey R. Brown, in the Orange Circuit Court of Orange County, Indiana for the sum of \$71.06 which said judgment is unpaid and in full force, and effect and further alleges that the defendant, Orange County State Bank obtained a judgment against the defendants Chancey R. Brown and Mary G. Brown for the sum of \$211.55, which said judgment is in full force and effect. Each of said judgments being liens against said real estate junior and second to the lien of the

plaintiff herein. That said parties are made parties hereto for the purpose of protecting any interest they may have in the subject matter of this action.

51 Wherefore, plaintiff sues and demands judgment for Three Thousand Dollars (\$3000.00) and ask that said mortgage may be foreclosed and said real estate be ordered sold to pay and satisfy plaintiff's said claim and debt, for costs and for all other proper relief.

Frank S. Houston,
Attorney for Plaintiff.

52

Hardinsburg, Ind., February 19, 1938.

\$2500.00

One Year after date, I, we, or either of us promise to pay to the order of

Bank of Hardinsburg

Two Thousand Five Hundred and no/100 Dollars

Negotiable and payable at the Bank of Hardinsburg, Hardinsburg, Indiana, without any relief whatever from Valuation or Appraisement Laws of the State of Indiana, for value received, with interest at 6 per cent. per annum payable semi-annually from date until maturity and 8% per annum after maturity until paid, and Attorney's Fees. The drawer and endorsers severally waive presentment for payment, protest, notice of protest and non-payment of this note.

No. 8987.

Due Feb. 19, 1939.

Chancey R. Brown,
Mary C. Brown.

Secured by
Real Estate
Mortgage

EXHIBIT "B".

Mortgage.

This Indenture Witnesseth, That Chancey R. Brown and Mary G. Brown, his wife, of Orange County in the State of Indiana, Mortgage and Warrant to State Bank of Hardinsburg, of Washington County, in the State of Indiana, the following described real estate in Orange County in the State of Indiana, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.7 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north and range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{4}$ rods more or less to a point which is $66\frac{1}{4}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning, containing 37 acres more or less.

This mortgage is made subject to a mortgage on the last above described real estate in the sum of approximately Seven Hundred Twenty Five (\$725.00) Dollars, in favor of the Federal Land Bank of Louisville, Kentucky which mortgage grantees assume and agree to pay.

to secure the payment, when the same shall become due, of one certain promissory note bearing even date herewith, for the sum of Twenty Five Hundred (\$2500.00) Dollars, executed by Chancey R. Brown and Mary G. Brown, husband and wife, and payable to the order of the State Bank of Hardinsburg, of Hardinsburg, Indiana, One Year
54 after date, with interest thereon at the rate of six per cent (6%) per annum, payable semi-annually; said note

providing for the payment of expenses of collection, including attorney fees and waiving relief from valuation and appraisement laws.

And the mortgagors expressly agree to pay the sum of money above secured, without relief from valuation or appraisement laws; and upon failure to pay any one of said notes, or any part thereof, at maturity or the interest thereon, or any part thereof, when due, or the taxes or insurance as hereinafter stipulated, then all of said notes are to be due and collectible, and this mortgage may be foreclosed accordingly. And it is further expressly agreed, that until all of said notes are paid, said mortgages will keep all legal taxes and charges against said premises paid as they become due, and will keep the buildings thereon insured for the benefit of the mortgagee, as their interest may appear, and the policy duly assigned to the mortgagee, to the amount of Two Thousand (\$2000.00) Dollars, and failing to do so, said mortgagee may pay said taxes or insurance, and the amount so paid, with 6 per cent interest, shall be a part of the debt secured by this mortgage.

In Witness Whereof, the said mortgagors have hereunto set their hands and seals this 19th day of February, 1938.

Chancey R. Brown, (Seal)

Mary G. Brown. (Seal)

State of Indiana }
Washington County } ss.

Before me, the undersigned, a Notary Public in and for said County, this 19th day of February, 1938, came Chancey R. Brown and Mary G. Brown, husband and wife, and acknowledged the execution of the foregoing instrument.

55 Witness my hand and Notarial Seal.

(Seal)

Frances Porter,
Notary Public.

Comm. Exp. Dec. 15, 1940.

And Afterwards, on September 25, 1939, the same being the 13th Judicial Day of the September Term of the Orange Circuit Court, the following further proceedings were had in said cause, to-wit:

On the motion of the plaintiff, The Orange County Bank and the Central Rubber and Supply Co. are made party-defendants. Comes now the plaintiff and files amended complaint, which amended complaint reads as follows, to-wit: (H. I.) Come now Tucker and Tucker, attorneys, and appear for the defendant Orange County Bank. Comes now A. L. Dillard, attorney, and appears for the defendant Central Rubber & Supply Co. Said defendants are ruled to answer.

And Afterwards, on the 7th day of October, 1939, the same being the 24th Judicial Day of the September Term of the Orange Circuit Court, the following further proceedings were had in said cause, to-wit:

Come now the defendants Chancey R. Brown and Mary G. Brown, and the Orange County State Bank and file answer in general denial, which answer reads as follows, to-wit: (H. I.)

And Afterwards on the 20th day of November, 1939, the same being the 1st Judicial Day of the November Term of the Orange Circuit Court, the following further proceedings were had, to-wit:

Come again the parties by their attorneys as heretofore and this cause now coming on for trial the same is submitted to the court for trial without the intervention of a jury. And the court having heard the evidence and being sufficiently advised in the premises finds for the defendant Central Rubber & Supply Co. and that there is due said defendant from the defendant Chancey R. Brown on the judgment set out in the complaint the sum of fifty dollars (\$50.00) from the sale of the Real Estate belonging to Chancey R. Brown without relief from valuation and appraisal laws. Which said debt and claim of the said defendant is a lien against the real estate hereinafter described, owned by Chancey R. Brown, and herein sought to

be foreclosed, superior to the claim and debt of the defendant Orange County Bank and of the claim and debt of the plaintiff hereinafter found and determined.

58 The court further finds for the plaintiff on its complaint herein that there is due the plaintiff from the defendants Chancey R. Brown and Mary G. Brown on the note herein sued on the sum of \$2762.50 and the further sum of \$170.00 as a fee for its attorney, a total of \$2932.50, all without relief from valuation and appraisement laws; that said sums are secured by the mortgage sought to be foreclosed by the complaint; that said mortgage was duly recorded in the office of the recorder of Orange County, Indiana, on the 23rd day of February, 1938 and that said plaintiff is entitled to have said mortgage foreclosed against the defendants Chancey R. Brown and Mary G. Brown. Which said debt and claim of the said plaintiff herein is second and junior to the claim and debt of the defendant Central Rubber & Supply Co. but is superior to the debt and claim of the defendant Orange County Bank. The court further finds for the defendant Orange County Bank as alleged in the complaint herein and that there is due said defendant from the defendant Chancey R. Brown and Mary G. Brown on the judgment set out in said complaint the sum of \$211.55 without relief from valuation and appraisement laws. Which said claim and debt of the said defendant Orange County Bank is second and junior to the debt and claims of both the defendant Central Rubber & Supply Co. and the plaintiff herein.

It is therefore considered and adjudged by the court that the defendant Central Rubber & Supply Co. recover of and from the defendant Chancey R. Brown the sum of \$50.00 together with its costs herein laid out and expended and taxed at _____ dollars, without relief from valuation and appraisement laws, the said judgment to bear interest at the rate of six per cent per annum from the date of 59 the rendition thereof.

It is therefore further considered and adjudged by the court that the defendant Orange County Bank recover of and from the defendant Chancey R. Brown and Mary G. Brown the sum of \$211.55 together with its costs herein laid out and expended and taxed at _____ dollars, without relief from valuation and appraisement laws, the said judgment to bear interest at the rate of six per cent per annum from the 13th day of September, 1938.

It is further considered and adjudged by the court that the plaintiff recover of and from the defendants Chancey R. Brown and Mary G. Brown the sum of \$2932.50, and also its costs and charges in this case laid out and expended, taxed at dollars, without any relief whatever from valuation laws, the judgment to bear interest at the rate of six per cent per annum from the date of the rendition thereof until paid.

And it is further ordered, considered and adjudged by the court that the equity of redemption of the defendants Chancey R. Brown and Mary G. Brown, and all persons claiming by, through or under them in and to said Mortgaged premises, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 west, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 114.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north and range 2 east, described as follows,

to-wit: Beginning at the northeast corner of said 60 southeast quarter and running thence west $93\frac{1}{4}$ rods more or less to a point which is $66\frac{3}{4}$ rods of the northwest corner of said quarter section thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

be and the same is hereby forever barred and foreclosed, and that said real estate and all of the right, title, interest and claim of said defendants Chancey R. Brown and Mary G. Brown and all persons claiming from, under or through them in and to the same, or so much thereof as may be necessary for said purpose shall be sold by the sheriff of this county as lands are sold on execution; and the proceeds arising from said sale, the sheriff is ordered and directed to apply in the manner following, to-wit: First, the payment of all the costs accrued and the costs of said sale.

Second, to the payment of the amount found due the defendant Central Rubber & Supply Co. from Chancey R. Brown herein being the amount of the judgment herein, before rendered, together with interest from this date.

Third, to the payment of the amount found due the plaintiff herein, being the amount of the judgment heretofore rendered, together with interest from this date.

Fourth, to the payment of the amount found due the defendant Orange County Bank herein, being the amount of the judgment herein before rendered, together with interest from this date, a total of \$226.35.

The overplus if any there be, remaining after the payment of the foregoing judgment, interest and costs to be paid by the sheriff to the Clerk of this Court for the use of the parties lawfully authorized to receive the same; and in the event said mortgaged property shall fail to sell for a sum sufficient to pay and satisfy said judgments, principals, interest and costs, the residue thereof remaining unpaid shall be levied of the goods and chattels, lands and tenements of the defendants Chancey R. Brown and Mary G. Brown, subject to execution, and sale thereof shall be made without relief from valuation and appraisement laws.

It is further ordered by the court, that a duly certified copy of this decree under the hand of the Clerk and the seal of this Court, shall be sufficient authority to the Sheriff to execute the same.

O. K. J. L. Tucker.

State of Indiana, } ss.
County of Orange.

I, William O. Ritter, Clerk of the Orange Circuit Court, do hereby certify that the above and foregoing is a true and complete copy of the proceedings had in said cause in said court and the same appears of record now on file in my office as such clerk.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Paoli, Indiana, this the 31st day of August, 1940.

(Seal)

William O. Ritter,
Clerk Orange Circuit Court.

62 And afterwards to-wit at the October Term of said Court on the 20th day of November, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to-wit:

Filed
Nov. 20,
1940.

District Court's Special Findings of Fact and Conclusions of Law.

63 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana,

New Albany Division.

In the Matter of
Chancey Ray Brown and Mary G. } In Bankruptcy
Brown, his wife, } No. 554.
Debtors.

SPECIAL FINDINGS OF FACT.

In the course of the proceedings in this cause, one of the secured creditors, State Bank of Hardinsburg, filed its motion to strike from the schedules as a part of the estate of the debtors, certain real estate. The motion required evidence to be presented to the court, which was done, and, from a consideration of such evidence, the court now states its Special Findings of Fact to be as follows, to-wit:

64

I.

That, on February 19, 1938, Chancey Ray Brown and Mary G. Brown, debtors herein, became indebted to the State Bank of Hardinsburg in the amount of \$2,500.00 evidenced by their promissory note in said amount dated February 19, 1938, and due one year thereafter with interest at six per cent (6%) per annum payable semi-annually, to maturity, and eight per cent (8%) per annum after maturity until paid, and attorney fees, and to secure the payment thereof, debtors executed their mortgage to the State Bank of Hardinsburg, dated February 19, 1938, calling for the payment of \$2,500.00 one year from date, on the following described real estate then owned by them:

A part of the southwest quarter of Section 18 and a part of the northwest quarter of section 19, all in Township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, Township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of Section 19, Township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of Section 19, in Township 2 north, range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{4}$ rods more or less to a point which is $66\frac{1}{4}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

65

II.

That no payments have been made on the principal of said note since its execution on February 19, 1938.

66

III.

That, on March 4, 1939, a complaint was filed by the State Bank of Hardinsburg in the Orange Circuit Court of Orange County, Indiana, against the debtors herein in which the plaintiff sought to recover a judgment against the debtors on said note and to foreclose the mortgage given by the debtors on the real estate in question to secure the payment of said note; that said cause was docketed in said Orange Circuit Court as Cause No. 10039.

67

IV.

That, on September 25, 1939, the State Bank of Hardinsburg filed its amended complaint in Cause No. 10039 in said Orange Circuit Court making certain judgment creditors of the debtors herein parties defendant for the purpose only of protecting any interest said judgment creditors might have in the subject-matter of said foreclosure action, but in no way affecting the interest of said debtors.

68

V.

That, on November 20, 1939, judgment was rendered by said Orange Circuit Court in said cause on the note sued on and the claims of other lienholders against the defendants Chancey Ray Brown and Mary G. Brown, his wife, and a decree was entered on said date foreclosing the said mortgage, and said mortgage was ordered foreclosed and said land ordered sold to pay and satisfy said judgment.

69

VI.

That no process issued for the execution of said judgment or decree of sale until after the lapse of one (1) year from the filing of the complaint in that proceeding, but, upon execution being issued on said decree of foreclosure, the Sheriff of Orange County duly sold said real estate on May 25, 1940, to the State Bank of Hardinsburg, and, on June 1, executed and delivered a sheriff's deed to said bank; that the debtors herein had not redeemed said real estate at any time prior to the sale thereof by the Sheriff or at any other time.

70

VII.

That, on May 28, 1940, debtors herein intended, and made a good faith effort to file their petition and schedules under Section 75 of the Bankruptcy Act, but did file, in fact, a regular petition and schedules for adjudication in bankruptcy, and not a petition under Section 75. That, thereafter, the schedules attached to the petition filed on May 28, were withdrawn, and attached to their petition under Section 75 of the Bankruptcy Act, and said latter petition and schedules were actually filed on June 4, and were approved by order of court entered on June 5, and on July 20, were referred to Honorable Robert A. Ralston, Conciliation Commissioner for Orange County, Indiana.

71

VIII.

That, on August 3, 1940, the State Bank of Hardinsburg filed its motion to strike from the schedules of debtors the said real estate as not being the property of the debtors at the time of the filing of the petition in bankruptcy, and, on September 10, said creditor filed its amended motion to strike said real estate from the schedules of debtors as not being property owned by them.

Robert C. Baltzell,
Judge, United States District Court.

November 20, 1940.

CONCLUSIONS OF LAW.

Upon the above and foregoing Special Findings of Fact, the court now states its Conclusions of Law to be as follows, to wit:

I.

That the foreclosure of the mortgage, given by debtors Chancey Ray Brown and Mary G. Brown, husband and wife, to the State Bank of Hardinsburg, and the right of redemption of the real estate therein described are controlled by the Act of the General Assembly of Indiana concerning proceedings in actions to foreclose real estate mortgaged, Chapter 30, page 257 of the Acts of 1931; Burns' Indiana Statutes Annotated 1933, Sections 3—1801 to 3—1821; said mortgage having been executed subsequent to the enactment of said statute.

II.

That the proceedings for the foreclosure of the mortgage given by said debtors in the Orange Circuit Court, the decree entered in said proceedings, and the sale by the Sheriff of Orange County of the real estate ordered sold in such proceeding, were regular and in compliance with the statutes of Indiana governing such proceedings and sale.

III.

That the amended complaint filed in said foreclosure proceeding by the State Bank of Hardinsburg on September 25, 1939, stated the cause of action as it existed when the suit was instituted; that said amended complaint had relation to the time at which the original complaint was filed; and that said amended complaint was a matter occurring in the continuation of the original cause and did not enlarge the time within which the sale of the real estate sought to be foreclosed might be had, and did not enlarge the time within which the debtors had a right to redeem the real estate in question.

IV.

That the right of the debtors herein to redeem said real estate from the judgment of foreclosure expired concurrently with the sale of said real estate by the Sheriff on

May 25, 1940, pursuant to the decree and order of the Orange Circuit Court in said foreclosure proceeding, and that, by their failure to so redeem prior to such sale, they lost all right, title and interest therein from and after the date of such sale which was on May 25, and which was prior to the filing of the petition in bankruptcy by the debtors in this cause. (Section 3—1803, Burns' Indiana Statutes, Annotated, 1933.)

76

V.

That said real estate is now owned by State Bank of Hardinsburg, petitioner herein, and was so owned by it prior to and on the date of the filing of the petition in bankruptcy by the debtors; that, therefore, said debtors had no right, title or interest in such real estate at the time of the filing of their bankruptcy petition, and that said real estate should not have been included in the schedules of property filed by them.

77

VI.

That the motion of the State Bank of Hardinsburg to strike the real estate in question from the schedules of debtors herein should be granted, and this bankruptcy proceeding should be dismissed insofar as it pertains to said real estate.

Robert C. Baltzell,
Judge, United States District Court.

November 20, 1940.

78

(Entry for November 20, 1940, continued.)

79

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—554) * *

Entered
Nov. 20
1940.

ENTRY FOR NOVEMBER 20, 1940.

Come now the parties by their respective attorneys, and this cause coming on to be finally heard by the Court upon the amended motion of the State Bank of Hardinsburg, secured creditor, to strike out parts of the debtors' schedules, and the Court having heard the evidence and argument of counsel, and being sufficiently advised in the premises, now signs and files herein its Special Findings

of Fact and states its Conclusions of Law thereon, which Special Findings of Fact and Conclusions of Law are ordered by the Court filed and made a part of the record in this cause, all of which is now done.

It Is, Therefore, Ordered by the Court that the amended motion of the State Bank of Hardinsburg, Indiana, to strike out parts of the bankrupts' schedules, be and the same is hereby sustained.

It Is Further Ordered by the Court that the following described real estate in Orange County, State of Indiana, to wit:

A part of the southwest quarter of Section 18 and a part of the northwest quarter of section 19, all in Township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, Township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence 80 east 171.38 rods to the east line of the northwest quarter of Section 19, Township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres more or less, with all appurtenances.

Also, a part of the southeast quarter of Section 19, in Township 2 north, range 2 east, described as follows, to wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{2}$ rods more or less to a point which is $66\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less,

be, and the same is, hereby stricken from the schedules attached to the debtors' petition herein, and this bankruptcy proceeding is hereby dismissed insofar as it pertains to said real estate, and the Conciliation Commissioner is ordered and directed to make his report without taking action upon and expressly excepting therefrom the above described real estate.

Petition for Appeal.

61

81 And afterwards to wit at the October Term of said Court on the 5th day of December, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Filed
Dec. 8,
1940.

Come now the debtors and file petition for appeal, which petition is as follows:

82 UNITED STATES DISTRICT COURT
Southern District of Indiana,
New Albany Division.

In the Matter of
Chancey Ray Brown and Mary
G. Brown, } No. 554.
Debtors. } In Bankruptcy.

Chancey Ray Brown and Mary G.
Brown, }
Appellants, } Petition to strike
vs. } Real Estate.
State Bank of Hardinsburg,
Appellee. }

PETITION FOR APPEAL.

To the Hon. Robert C. Baltzell, District Judge:

The above named farmer-debtors, feeling themselves aggrieved, (also in the behalf of unsecured creditors who shall be greatly harmed if present ruling is not reversed) said ruling of the Court having been entered November 20, 1940, denying said debtors' motion to dismiss the petition of the State Bank of Hardinsburg, a secured creditor, filed August _____, 1940, and sustaining said creditor's petition to strike from debtors' schedule of assets certain real estate described as:

A part of the southwest quarter of Section 18 and a part of the northwest quarter of Section 19, all in Township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of Section 18, Township 2 north, Range 2

east, and running 99 rods west; thence south 82.77 rods; thence west 74 rods; thence south 26.40 rods; thence east 171.38 rods to the east line of the northwest quarter of Section 19, Township 2 north, Range 2 east; thence north 111.18 rods to the place of beginning, containing 88 acres, more or less.

Also, a part of the southeast quarter of Section 19, in Township 2 north, Range 2 east, described as follows, to wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{2}$ rods, more or less, to a point which is $66\frac{3}{4}$ rods east of the northwest corner of said quarter section; thence south 60 rods; thence east to the east line of said section; thence north 60 rods to the place of beginning, containing 37 acres, more or less, with all purtenances,

do hereby appeal from said ruling to the United States Circuit Court of Appeals, Seventh Circuit, Chicago, Illinois, for errors of fact and of conclusions of law to be filed forthwith together with appeal bond, and said farmer-debtors pray that this appeal be allowed.

(Signed) Chancey Ray Brown,

(Signed) Mary G. Brown,

*Farmer-Debtors, Appellants
herein.*

(Signed) C. R. McBride,

*Attorney for Farmer-Debtors,
Appellants.*

Entered
Dec. 5,
1940.

83 (Entry for December 5, 1940, continued.)

And said petition is now presented to the Court and is granted, and the appeal is hereby allowed, and the appeal bond to be given by the debtors is hereby fixed at Two Hundred Fifty Dollars (\$250.00), which said bond is to be presented for approval of the Court within fifteen (15) days from and after the date hereof:

87 And afterwards to wit at the October Term of said Court on the 28th day of December, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors, by their attorney, and files assignment of error, which assignment of error is as follows:

ASSIGNMENT OF ERROR.

Chancey Ray Brown and Mary G. Brown, farmer-debtors above noted and appellants herein, state that at the hearing of this matter, and the ruling entered therein November 20, 1940, manifest error was committed by the United States District Court for the Southern District of Indiana to the prejudice of these appellants and to the grave injury of their unsecured creditors in this, to wit:

1. Error of fact that competent foreclosure of mortgage proceedings were instituted by appellee March 4, 1939, as recited in Paragraph III, for the reason that all parties in interest were not pleaded and that, if a valid suit to foreclose has at any time been filed by appellee, the true date thereof should be September 25, 1939, from which date the one year period of redemption should be reckoned.

2. Error of law in foreclosing appellants' right to redeem the valuable real estate involved, which is so vital to their welfare and to the interests of their unsecured creditors, as of May 25, 1940, recited in paragraph VI of said order of November 20, 1940, no deed divesting the full title of appellants and vesting title in appellee having issued when appellants invoked the benevolent provisions of the Frazier-Lemke Debtor Moratorium Act of the Congress.

Wherefore, Appellants pray that the order of the District Court, from which appeal is made, shall be reversed, and for all other proper relief.

(Signed) Chancey Ray Brown,

(Signed) Mary G. Brown,

Appellants.

C. R. McBride,
New Albany, Ind.,
Attorneys for Appellants.

We, Chancey Ray Brown and Mary G. Brown, farmer-debtors and appellants herein, swear that the statements made in the foregoing are true to the best of our knowledge and belief.

(Signed) Chancey Ray Brown,

(Signed) Mary G. Brown.

Motion Re Appeal Bond.

89 Subscribed and sworn to by Chancey Ray Brown and Mary G. Brown, farmer-debtors and appellants in the foregoing, before me this 28th day of December, A. D. 1940.

(Signed) Charles R. McBride,
Notary Public.

My Commission Expires May 8, 1942.

Filed
Dec. 20,
1940.

84 And afterwards to wit at the October Term of said Court on the 20th day of December, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors and file a petition for an extension of ten days for filing bond on appeal, which petition is as follows:

85 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana,

New Albany Division.

In the Matter of

Chancey Ray Brown and Mary
G. Brown,

Debtors.

No. 554.

In Bankruptcy.

Hon. Robert C. Baltzell, Judge:

The undersigned Farmer-Debtors respectfully file this verified petition, responding to Order for December 5, 1940, wherein a period of fifteen days from the date of said Order was granted petitioners within which period to file, for approval, a cost bond on appeal in the sum of Two Hundred Fifty (\$250.00) Dollars, and meeting with some complications in the execution of such bond for costs, pray the Court to grant an extension of ten days within which period these petitioners can complete their appeal to the United States Circuit Court of Appeals, Chicago, Illinois, by filing bond, recitals of error upon which to base such appeal and Praeceptum of record to be forwarded to Chicago.

Wherefore, the undersigned pray for the extension requested and for all proper relief.

(Signed) Chancey Ray Brown,

(Signed) Mary G. Brown.

Subscribed and sworn to before me this 19th day of December, 1940.

(Signed) Charles R. McBride,
Notary Public.

My Commission Expires May 8, 1942.

Copy to Frank Houston, Atty., Salem, Indiana.

86 - (Entry for December 20, 1940, continued.)

Entered
Dec. 20,
1940.

And said petition being submitted to the Court, and the Court being duly advised in the premises,

It is ordered that said petition be, and the same is, hereby granted, and the time for the debtors to file their appeal bond in the sum of Two Hundred Fifty Dollars (\$250.00), is hereby extended to and including December 30, 1940.

90 And afterwards to wit at the October Term of said Court on the 8th day of January, 1941, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors, Chancey Ray Brown and Mary G. Brown, by their attorney, and file appeal bond in the sum of \$250.00, which bond is approved by the Court, and is as follows:

Filed
Jan. 8,
1941.

91

UNITED STATES DISTRICT COURT
Southern District of Indiana,
New Albany Division.

Chancey Ray Brown and Mary G.
Brown, Farmer-Debtors.

Chancey Ray Brown and Mary G.
Brown,

Appellants,

vs.

State Bank of Hardinsburg.

Appellee.

No. 554.

In Bankruptcy under
Frazier-Lemke Act.

Know All Men by These Presents, That Chancey Ray Brown and Mary G. Brown, appellants herein, as principals, and cash in the sum of Two Hundred Fifty-two and 50/100 (\$252.50) Dollars, check for \$250.00 and currency for \$2.50, covering one per cent for handling, as surety, are held and firmly bound to the State Bank of Hardinsburg, appellee, in the full sum of \$250.00, to be paid to the said appellee, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seal and dated this 7th day of January, 1941.

Whereas, the above named principals have prosecuted an appeal to the United States Circuit Court of Appeals, Seventh Circuit, to reverse the order of the United States District Court for the Southern District of Indiana, entered November 20, 1940, in said cause:

Now, therefore, if the above named appellants shall diligently prosecute their appeal and shall answer all damages and costs if they fail to make good their plea, then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

(Signed) Chancey Ray Brown, (Seal)

(Signed) Mary G. Brown. (Seal)

Subscribed and sworn to before me this 7th day of January, A. D. 1941.

(Signed) Charles R. McBride,

Notary Public.

My com. ex. May 8, 1942.

92 And afterwards to wit at the October Term of said Court on the 10th day of January, 1941, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors and file praecipe for record on appeal, which is as follows:

93 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—554) * *

PRAECIPE FOR RECORD ON APPEAL.

To the Clerk of the United States District Court for the Southern District of Indiana, New Albany Division:

Please prepare and certify, forthwith, a transcript of the following records in the above entitled cause on appeal to the United States Circuit Court of Appeals, Seventh Circuit:

1. Appellants' schedules "A" and "B", executed May 27, 1940, and filed May 28, 1940.
2. Appellee's motion to strike vital real estate.
3. Appellants' motion to dismiss appellee's motion to strike.
4. Appellee's amended motion to strike.
5. District Court's Special Findings of Fact and Conclusions of Law.
6. District Court entry for November 20, 1940, from which appeal is taken.
7. Appellants' petition for authority to appeal.
8. District Court order for December 15, 1940, authorizing appeal and fixing amount of appeal bond.
9. Appellants' petition for extension of time within which to file appeal bond.
10. District Court order of December 20, 1940, granting further time for filing appeal bond for Court approval.
11. Appellants' assignment of error.
12. Copy of appellants' Appeal Bond.
13. Praeceptum for record.

Respectfully submitted,

Charles R. McBride,

Attorney for Appellants.

Clerk's Certificate.

94 United States of America }
Southern District of Indiana } ss.
New Albany Division }

I, Albert C. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the above and foregoing is a true and full transcript of the record and proceedings in the matter of Chancey Ray Brown and Mary G. Brown, Debtors, No. 554 Bankruptcy, according to the praecipe filed January 10, 1941, now remaining among the records of said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at New Albany, this 11th day of January, 1941.

(Seal) Albert C. Sogemeier,
Clerk, U. S. District Court, Southern
District of Indiana.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the third day of March, 1941, in the following entitled cause:

Cause No. 7574.

In the Matter of Chancey Ray Brown and Mary G. Brown,
Debtors.

Chancey Ray Brown and Mary G. Brown,
Appellants,

vs.

State Bank of Hardinsburg,
Appellee,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit:

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 22nd day of December, A. D. 1941.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the first day of October in the year of our Lord one thousand nine hundred and forty, and of our Independence the one hundred and sixty-fifth.

In the Matter of
Chancey Ray Brown and Mary
G. Brown,
Debtors.

Chancey Ray Brown and Mary G.
Brown,
Appellants.

7574 vs.
State Bank of Hardinsburg,
Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

And, to-wit: On the eleventh day of March, 1941, there was filed in the office of the Clerk of this Court an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7574.

In the Matter of Chancey Ray Brown and Mary G. Brown,
Debtors.

Chancey Ray Brown and Mary G. Brown,
Appellants,

vs.

State Bank of Hardinsburg,
Appellee.

The Clerk will enter our appearance as counsel for appellee.

Telford B. Orbison,
New Albany, Ind.,
Frank S. Hamlin,
Salem, Ind.

Endorsed: Filed Mar. 11, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the twenty-first day of April, 1941, there was filed in the office of the Clerk of this Court a petition to stay proceedings which said petition is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

Seventh Circuit,

1212 Lake Shore Drive, Chicago, Illinois.

In the Matter of the Petition of Chancey Ray Brown and Mary G. Brown, Farmer-Debtors.	} No. 554. Re: Bankruptcy under Frazier- Lemke Act.
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Chancey Ray Brown and Mary G. Brown, <i>Appellants,</i> <i>vs.</i> State Bank of Hardinsburg, <i>Appellee.</i>	} No. 7574. Re: Petition for Stay.
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To the Clerk,
United States Circuit Court of Appeals,
Seventh Circuit, 1212 Lake Shore Drive,
Chicago, Illinois.

Attention Mr. Blanchard desired.

The undersigned attorney for the petitioning Farmer-Debtors under No. 554 and as appellants in Cause No. 7574 above noted respectfully prays the Court for a stay of proceedings in the above cited matters pending re-financing application made by these debtors and hopefully advancing to a conclusion through the Federal Land Bank, Louisville, Ky.

If and when these re-financing efforts shall have become successfully completed the above cited appeal will be withdrawn as, likewise, bankruptcy proceedings under the Frazier-Lemke Moratorium Act.

Should appellants re-financing efforts fail, a brief will quickly be filed with the Court and Cause No. 7574 can proceed to judgment.

A copy of this prayer has this 19th day of April, A. D., 1941, been placed in the mail addressed to Telford B. Orbison, Union National Bank Building, New Albany, Indiana, local counsel for appellee.

C. R. McBride,
Attorney.

Endorsed: Filed April 21, 1941. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the twenty-second day of April, 1941, the following further proceedings were had and entered of record, to-wit:

Tuesday, April 22, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of:

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellant,

7574

vs.

State Bank of Hardinsburg,
Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

On petition of counsel for appellants, it is ordered by the Court that proceedings in the above entitled appeal be stayed during the pendency of the application made by the Debtors for refinancing; and it is further ordered that should said refinancing efforts fail, then appellants' brief shall be promptly filed.

And afterwards, to-wit: On the fifth day of July, 1941, there was filed in the office of the Clerk of this Court a motion of the Federal Land Bank of Louisville to be made a party to the appeal, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7574.

In the Matter of
 Chancey Ray Brown and Mary
 G. Brown, his wife,
 Debtors.

Chancey Ray Brown and Mary G.
 Brown,
Appellants,

vs.

State Bank of Hardinsburg,
Appellee.

Appeal from the District
 Court of the United
 States for the Southern
 District of Indiana, New
 Albany Division.

MOTION OF THE FEDERAL LAND BANK OF LOUISVILLE TO BE MADE A PARTY TO THE APPEAL.

Comes now The Federal Land Bank of Louisville, a corporation organized under and doing business by virtue of that act of Congress known as the Federal Farm Loan Act approved July 17, 1916, with its office and principal place of business in Louisville, Kentucky, having power by virtue of such act to contract, sue and be sued and to lend money to farmers upon the security of first mortgages upon farm-lands, and respectfully shows to the court;

That it is an interested party to this appeal by reason of its holding a first mortgage upon the real estate owned by the estate of the debtor-appellant, upon which real estate the appellee, State Bank of Hardinsburg, holds a second mortgage;

That it has not been made a party to this appeal, and has not been furnished with copies of the transcript or appellant's brief;

That its rights as such mortgagee will be vitally affected

by the outcome of this appeal, and that it is entitled to and should be made a party to the appeal and given an opportunity to protect its interests herein involved.

Wherefore, petitioner, The Federal Land Bank of Louisville, prays:

- (A) That it be made a party to this appeal;
- (B) That it be furnished with copies of the transcript and appellant's brief;
- (C) That it be given leave to file its brief as appellee;
- (D) That it be afforded the opportunity of making oral argument in this cause.

J. F. Williamson,

J. S. Grimes,

*Counsel for The Federal Land
Bank of Louisville,*

224 East Broadway,
Louisville, Kentucky.

Endorsed: Filed July 5, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the sixteenth day of July, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, July 16, 1941.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellants,

7574

vs.

State Bank of Hardinsburg,

Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

It is ordered that the motion of The Federal Land Bank of Louisville to be made a party to this appeal be, and it is hereby, deferred to await the determination of the appeal.

It is further ordered that leave be, and it is hereby, granted to said The Federal Land Bank of Louisville to file its brief herein, copies of which it shall have served upon counsel for appellants and for appellee.

It is further ordered that the Clerk of this Court shall send to said The Federal Land Bank of Louisville copies of the printed transcript of record and the briefs filed in this cause.

And afterwards, to-wit: On the seventeenth day of July, 1941, there was filed in the office of the Clerk of this Court the consent of appellant to motion of Federal Land Bank of Louisville, which said consent is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7574.

In the Matter of
Chancey Ray Brown and Mary
G. Brown,

Debtors.

Chancey Ray Brown and Mary G.
Brown,

Appellants,

vs.

State Bank of Hardinsburg,
Appellee.

In Bankruptcy: No. 554
under the Frazier-Lemke
Moratorium Act.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

67 Alpine Street, Dubuque, Iowa, July 16, 1941.

To the Judges and Officers of the
United States Circuit Court of
Appeals, Seventh Circuit,
1212 Lake Shore Drive,
Chicago, Illinois.

Gentlemen:

This may be an idle and superfluous gesture, but as attorney for the Farmer-Debtors and Appellants in the above cited cause the undersigned desires to make formal acknowledgment of receipt of a copy of the motion to intervene as a party in interest filed by the Federal Land Bank of Louisville, Kentucky, dated July 3, 1941, cheerfully assenting to the prayer of the Bank to intervene, asking that the attorneys for the Bank be granted full privileges to file briefs and to appear for oral argument, if desired, and that they be furnished copies of briefs filed by appellant and by appellee.

The writer advises that he is mailing, postage prepaid, copies hereof to appellants, to Tilford B. Orbison, attorney for appellee, and to The Federal Land Bank of Louisville, Kentucky, in the same mail with this.

Yours truly,

C. R. McBride,
Attorney for Appellants.

Endorsed: Filed July 17, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the first day of October, 1941, there was filed in the office of the Clerk of this Court a motion of counsel for appellants for leave to withdraw appearance, which said motion is in the words and figures following, to-wit:

Dubuque, Iowa, September 6, 1941.

Cause No. 7574.

Chancey Ray Brown, *et al.*,
Debtors and Appellants,

—vs.

State Bank of Hardinsburg,

Appellee.

In Bankruptcy:
Frazier-Lemke
Farmer-Debtor
Moratorium Act.

Office of the Clerk,
United States Circuit Court of Appeals,
Seventh Circuit, 1212 Lake Shore Drive,
Chicago, Illinois.

Sir:

The undersigned acknowledges receipt of entry dated September 3, 1941, fixing Wednesday, October 15, 1941, as the date, and the Court Room, as above indicated as the place, set for hearing of Cause No. 7574, above cited.

With permission of the Court, and because of age, eighty-fifth year of life's pilgrimage, failing health, arthritis and hardening of the arteries, the undersigned hereby withdraws from this proceeding, thereby permitting his clients, Debtors and Appellants, if desired, to become represented by a younger, more active and abler proctor.

He expresses the hope that the attorney for the Federal Land Bank, if in attendance at the proposed hearing, shall present the facts so convincingly, disclosing the worthiness of these Farmer-Debtor Appellants, as to win a reversal of the ruling of the District Court from which the appeal was taken.

Copies of this prayer, first-class postage prepaid, have this date been mailed to appellants, to attorney for appellee, and to Federal Land Bank, Louisville.

Yours truly,

Charles R. McBride,
Attorney.

Endorsed: Filed Oct. 1, 1941. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the first day of October, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 1, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparke, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellants,

7574

vs.

State Bank of Hardinsburg,
Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

Upon the filing by Charles R. McBride of a withdrawal of appearance as counsel for Chancey Ray Brown and Mary G. Brown, appellants herein, it is ordered that said withdrawal of appearance be, and it is hereby, approved.

It is further ordered that leave be, and it is hereby, granted to Samuel E. Cook to enter his appearance herein as counsel for said appellants.

And afterwards, to-wit: On the third day of October, 1941, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants, which said appearance is in the words and figures following, to-wit:

Appearance for Appellant.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7574.

In re Chanécy Ray Brown, *et al.*, Debtors.

Chancey Ray Brown, *et al.*,

vs.

State Bank of Hardinsburg.

The Clerk will enter my appearance as counsel for
Appellant.Samuel E. Cook,
Huntington, Ind.Endorsed: Filed Oct. 3, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the sixth day of October, 1941, there was filed in the office of the Clerk of this Court, a petition of Federal Land Bank of Louisville to be made a party appellee, which said petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7574.

In the Matter of
Chancey Ray Brown and Mary
G. Brown,
Debtors.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

Chancey Ray Brown and Mary G.
Brown,
Appellants,
vs.
State Bank of Hardinsburg,
Appellee.

Honorable
Robert C. Baltzell,
Judge.

PETITION.

Comes now The Federal Land Bank of Louisville, and respectfully represents to the Court:

That it has heretofore petitioned leave of the Court to appear and to be made a party-appellee and to file brief in support of its position in this cause;

That the Court has granted the petitioner leave to file brief, but has withheld making The Federal Land Bank of Louisville a party-appellee until hearing of this cause;

That The Federal Land Bank of Louisville finds itself in accord with the theory expressed in the brief of the appellee State Bank of Hardinsburg heretofore filed in this cause and desires leave of this Court to be allowed to adopt the brief of said State Bank of Hardinsburg as the brief of this petitioner;

The Federal Land Bank of Louisville further represents to the Court that since the date of the filing of the brief of the appellants, Chancey Ray Brown and Mary G.

Brown, and the brief of the appellee State Bank of Hardinsburg, C. R. McBride has withdrawn as counsel for appellants. Chancey Ray Brown and Mary G. Brown, and Samuel E. Cook of Huntington, Indiana has been given leave of this Court to enter appearance as counsel for said appellants;

That this petitioner is informed that said counsel, Samuel E. Cook, desires to present to this Court on oral argument, and possibly by supplemental brief; a theory in this cause different from that expressed in the brief filed by the appellants herein, and that this petitioner desires an opportunity to answer orally, and, if necessary, by brief the new position to be taken by the appellants.

Wherefore, your petitioner, The Federal Land Bank of Louisville, prays:

1. As heretofore prayed, that The Federal Land Bank of Louisville be made a party-appellee in this cause and be allowed to appear and set up its rights herein;

2. That it be given leave to adopt the brief of the appellee State Bank of Hardinsburg, and that such brief be considered as the brief of The Federal Land Bank of Louisville;

3. That The Federal Land Bank of Louisville be given opportunity to appear at the oral argument of this cause set for October 15, 1941 and to reply to the argument of the appellants;

4. That if the appellants deem it advisable to file supplemental brief in this cause, that The Federal Land Bank of Louisville be given leave to file a reply brief thereto;

And for such other relief as the Court deems fitting and proper under the circumstances.

William C. Goodwyn,

J. F. Williamson,

John S. Grimes,

*Attorneys, The Federal Land Bank
of Louisville,*

224 East Broadway,
Louisville, Kentucky.

State of Kentucky }
County of Jefferson } ss.

R. W. McLemore, Jr., being duly sworn on oath, says that he is Vice President of The Federal Land Bank of Louisville, that he has read the foregoing petition, and that the statements contained therein are true as he verily believes.

R. W. McLemore, Jr.,
*Vice President, The Federal Land
Bank of Louisville.*

Subscribed and sworn to before me this 4th day of October, 1941.

(Seal) Caroline A. Williamson,
Notary Public, Jefferson County, Ky.

My commission expires June 17, 1945.

Endorsed: Filed Oct. 6, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the seventh day of October, 1941, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 7, 1941.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellants.

7574

vs.

State Bank of Hardinsburg,
Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

On petition of counsel for The Federal Land Bank of Louisville, it is ordered (1) that said The Federal Land Bank of Louisville be made a party-appellee in this cause and be allowed to appear and set up its rights herein; (2)

that it be given leave to adopt the brief of the appellee State Bank of Hardinsburg, and that such brief be considered as its brief; (3) that it be given opportunity to appear at the oral argument of this cause and to reply to the argument of the appellants; and (4) if the appellants deem it advisable to file supplemental brief in this cause, that it be given leave to file a reply brief thereto.

And afterwards, to-wit: On the eleventh day of October, 1941, there was filed in the office of the Clerk of this Court, an appearance of counsel for The Federal Land Bank of Louisville, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7574.

In the Matter of Chancey Ray Brown, *et al.*, Debtors.

Chancey Ray Brown, *et al.*,

Appellants,

vs.

State Bank of Hardinsburg and The Federal Land Bank
of Louisville,

Appellees.

The Clerk will enter our appearance as counsel for The Federal Land Bank of Louisville.

J. F. Williamson,

224 East Broadway, Louisville, Kentucky.

John S. Grimes (G. J. F. Williamson),

224 East Broadway, Louisville, Kentucky.

Endorsed: Filed Oct. 11, 1941. Kenneth J. Carrick.
Clerk.

And afterwards, to-wit: On the fifteenth day of October, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 15, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.

In the Matter of
Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellants.

7574 vs.
State Bank of Hardinsburg, *et al.*,
Appellees.

} Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Samuel E. Cook, counsel for appellants, and by Mr. Telford B. Orbison, counsel for appellee State Bank of Hardinsburg, Mr. John S. Grimes, counsel for appellee The Federal Land Bank of Louisville, being present but not participating in the oral argument for appellees, and the Court takes this matter under advisement.

It is ordered that leave be, and it is hereby, granted to counsel for appellants to file herein four typewritten copies of a short brief for appellants.

And afterwards, to-wit: On the eighth day of November, 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7574.

October Term and Session, 1941.

In the Matter of

**CHANCEY RAY BROWN and
MARY G. BROWN,**

Debtors.

**CHANCEY RAY BROWN and
MARY G. BROWN,**

Appellants.

vs.

STATE BANK OF HARDINSBURG,

Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

November 8, 1941.

Before EVANS, MAJOR, AND MINTON, *Circuit Judges.*

MINTON, *Circuit Judge.* On March 4, 1939, the appellee filed in the Circuit Court of Orange County, Indiana, a complaint to foreclose a mortgage given by the appellants to the appellee, on a certain tract of land in Orange County, Indiana, consisting of one hundred and twenty-five acres.

On September 25, 1939, appellee filed its amended complaint, making certain judgment creditors of the appellants parties. On November 20, 1939, the court entered a judgment of foreclosure, and authorized the sale of said land. After the expiration of a year from the date of filing the complaint for foreclosure, the sheriff of Orange County sold the real estate to the appellee on May 25, 1940, and on June 1, 1940, delivered a deed therefor to the appellee.

On May 28, 1940, an entry was made in the Clerk's

Docket in the District Court for the Southern District of Indiana, which recited that the appellants filed their voluntary petition in bankruptcy under Sec. 75, but the record shows, and the District Court found, that they actually filed a regular petition and schedules, although they in good faith intended to file a proceeding under Sec. 75. The appellants realized they had made a mistake and had not filed a petition under Sec. 75, and the record shows that on the same date they withdrew the petition that day filed. The record then recites:

"Comes now the debtors * * * and withdraw their petition filed on May 28, 1940 on account of it being wrongfully filed."

On June 4, 1940, the record shows, a proper petition and schedules were filed under Sec. 75.

We think this withdrawal did not amount to a dismissal. Obviously, the papers were withdrawn from the file for the purpose of correction. This view is supported by the fact that the filing on June 4, 1940, carried the same number on the District Court Docket as was assigned to the case when filed May 28, 1940.

We therefore hold that the second filing was an amendment to the first proceeding, and relates back to the original filing, and therefore there was on May 28, 1940, a proceeding pending under Sec. 75. *United States ex rel. Texas Portland Cement Co. v. McCord*, 233 U. S. 157, 34 S. Ct. 550, 58 L. Ed. 893; *Interstate Refineries, Inc. v. Barry*, 7 F. 2d. 548, 550; *General Orders in Bankruptcy*, 37, *Federal Rules Civil Procedure* 15 (C), 28 U. S. C. A. 723(c), *et seq.*

When the appellants filed their amended petition on June 4, 1940, they scheduled as one of their assets the one hundred and twenty-five acres of land which the sheriff had sold to appellee on May 25, 1940. The appellants moved to strike this land from the bankruptcy schedule and the court sustained the motion, and ordered the land stricken from the schedule. From that order, the appellants prosecute this appeal.

It is the contention of the appellants that since the deed was not delivered until after their petition under Sec. 75 was filed, the property came into the jurisdiction of the bankruptcy court and was properly scheduled. The appellee says the equity of redemption was cut off by the sale on May 25, and therefore there was no property or any

equity or right in such property left in the appellants, for the bankruptcy court to assume jurisdiction of.

Burns Indiana Statutes (1933) Sec. 3-1801, provides:

"In any proceeding for the foreclosure of any mortgage hereafter executed on real estate, no process shall issue for the execution of any such judgment or decree of sale for a period of one (1) year after the filing of a complaint in any such proceeding"

There is no question but what the year had expired before the sale was held, and the regularity of the sale is not questioned. Did the sale cut off the equity of redemption?

Burns Indiana Statutes (1933) Sec. 3-1803, provides:

"At any time prior to the sale, any owner or part owner of the real estate may redeem the same from the judgment by payment to the clerk, prior to the issuance to the sheriff of the judgment and decree or to the sheriff thereafter, of the amount of the judgment, interest and costs, for the payment or satisfaction of which the sale was ordered, in which event no process for the sale of the real estate under such judgment shall be issued or executed but the officer so receiving payment shall satisfy such judgment and the order of sale shall be vacated"

The Indiana courts have not construed this provision of the statute. Counsel on both sides agreed the statute had not been construed by the Indiana courts, and we are unable to find any case construing this section. We decline to anticipate by our decision what the construction of this statute by the Indiana courts may be. Without deciding, we will assume for the sake of the argument that the equity of redemption is cut off by the sale. Under the practice in Indiana, as we understand it, neither the sale needs to be confirmed, nor the deed of the sheriff approved by the court.

The question therefore narrows down to this: admitting that the equity of redemption was cut off by the sale, did that prevent the bankruptcy court from obtaining jurisdiction of the property where the petition under Sec. 75 was pending before the deed was delivered?

Paragraph (N) of Sec. 75, 11 U. S. C. A. Sec. 203(n), reads in part as follows:

"The filing of a petition or answer with the clerk of

court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

If the statute had stopped with the words "including all real or personal property, or any equity or right in any such property," there would be much force in the argument of appellee that the mortgagor had no equity or right in the property after the equity of redemption was cut off by a regular and legal sale. Then there would be nothing left but the bare legal title. If the sale were invalid, of course there was no sale and the equity would not be cut off.

The jurisdiction of the bankruptcy court under Sec. 75 does not depend upon the equity of redemption remaining. That is only one of the interests, rights or equities remaining in the mortgagor, which enables him to bring his property into the jurisdiction of the bankruptcy court. This statute has enumerated a number of other things which, if undone, entitles the mortgagor to bring the property in question into the jurisdiction of the bankruptcy court, and one of them is "where a deed has not been delivered." The non-delivery of the deed is in no way related to the equity of redemption, or required as a part of the process to cut off the equity of redemption. It is simply a fact which, if it exists at the time the petition in bankruptcy is filed under Sec. 75, is of itself sufficient to cast upon the bankruptcy court jurisdiction of the property.

This is further borne out by the provisions of Paragraph 75(N), which says:

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had

not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

This clearly provides if at the time of filing the petition the deed had not been delivered, the period of redemption shall be extended. The lack of delivery of the deed is not coupled with the period of redemption, but is separated by the conjunction "or." The bankruptcy statute, in the case where deed has not been delivered and the petition is filed before deed is delivered, not only casts exclusive jurisdiction upon the bankruptcy court, but authorizes extension of the period of redemption "for the purpose of carrying out the provisions of this section."

Since the mortgage in this case was given after the Bankruptcy Act was passed, we think there can be no question of the right of Congress to pass such legislation under its powers to enact bankruptcy legislation. *Wright v. Vinton Branch*, 300 U. S. 440, 470, 57 S. Ct. 556, 81 L. Ed. 736, 112 A. L. R. 1455; *Kalb v. Feuerstein*, 308 U. S. 433, 60 S. Ct. 343, 84 L. Ed. 370.

We therefore hold that since the deed had not been delivered at the time, to wit, May 28, 1940, the petition under Sec. 75 was filed; that the filing of the petition cast upon the bankruptcy court exclusive jurisdiction, and although the equity of redemption may have been cut off by the sale, the bankruptcy statute authorized the avoidance of that fact and an extension of the period of redemption for the purpose of carrying out the salutary provisions of the Bankruptcy Act.

The judgment is

REVERSED.

MAJOR, *Dissenting*.

I do not agree with the construction placed upon the section of the Bankruptcy Act in controversy. In my opinion the debtors, at the time of filing their petition, either had an interest in the property and therefore entitled to the benefits of the Act, or had no interest and not entitled to such benefits. I think the court should take one horn or the other of the dilemma. Apparently the majority takes both.

The opinion assumes that the debtors' equity of redemption terminated with the Sheriff's sale. Why assume? There is no ambiguity in the Statute. By its plain terms, the equity of redemption was terminated. In addition to the provisions of the Indiana Statute quoted in the opinion, Sec. 3-1808 provides as follows:

"Mortgages executed after June, 1931—Redemption.—There shall be no redemption from foreclosures of mortgages hereafter executed on real estate except as provided for under this act."

Upon the expiration of the period of redemption, every right, claim and interest which the debtors had in the property was extinguished. After the sale the debtors would have had no right to redeem even had they possessed the ability to do so. They could have conveyed nothing by deed or otherwise. As was said in *Glenn v. Hollums*, 80 F. (2d) 555, 557:

"* * * Nothing remains to be done to complete the superior title which passed by the sheriff's sales, except the purely ministerial act of delivering the sheriff's deed, * * *"

Delivery of the deed was not necessary to vest complete ownership in the purchaser. *Schreiner, et al v. Farmers' Trust Co. of Lancaster*, 91 F. (2d) 606, 607; 19 R. C. L. Sec. 442. It was only evidence of the title acquired by such purchaser. At most, the debtors retained nothing other than legal title, in trust for the purchaser. 42 C. J. Sec. 1891. There is no occasion to labor this point further in view of the reasoning of the majority.

It is difficult for me to comprehend the reasoning employed in the construction placed upon Section 75 (n). Perhaps that is the reason I am unable to agree. The phrase "or where deed has not been delivered" is held to "authorize extension of the period of redemption." This, in my opinion, is a fallacious interpretation, inconsistent with the purport of the paragraph when read in its entirety. It is provided that the filing of a petition "* * * shall immediately subject the farmer and all his property, * * * to the exclusive jurisdiction of the court, * * * or any equity or right in any such property, * * *". I think it is readily apparent that all the enumerated circumstances which follow are dependent upon the premise that the debtor, upon filing his petition, be possessed of an "equity or right" in the property. If no such right or

equity exists, none of the contingencies, including the one here relied upon, can be effective. For instance, among the contingencies enumerated are—" . . . contracts for purchase, contracts for deed, or conditional sales contracts," Under the majority construction it would follow that a debtor who, at the time of the filing of his petition, possessed one of these instruments, would bring into the jurisdiction of the Bankruptcy Court, any land described therein, and this irrespective of the fact that any equity or interest in such land had long before expired. In the same category is the phrase "where deed had not been delivered." There may be situations where the debtor has an "equity or right" until the delivery of a deed. There must be other cases—in fact, this is one—where the extinguishment of his "equity or right" was not dependent upon such delivery.

The construction placed upon the paragraph by the majority would, in my judgment, render it unconstitutional. Neither the Wright nor Kalb case, cited by the majority, sustains such construction. In both those cases, the court was dealing with a property right which the debtor had at the time of the filing of his petition. It seems pertinent to quote what the court in the Kalb case (308 U. S. 433) on page 442, said:

"As stated by the Senate Judiciary Committee in reporting these amendments: . . . subsection (n) brings all of the bankrupt's property, wherever located, under the absolute jurisdiction of the bankruptcy court, where it ought to be. Any farmer who takes advantage of this act ought to be willing to surrender all his property to the jurisdiction of the court, for the purpose of paying his debts, and for the sake of uniformity. . . ."

In *Wright v. Union Central Ins. Co.*, 304 U. S. 502, the court, in discussing the power of Congress to extend the period of redemption, as fixed by State law, on page 514, said:

" . . . The debtor has a right of redemption of which the purchaser is advised, and until that right of redemption expires the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor and its power to legislate for the rehabilitation of the debtor. . . ."

Further, on page 518, the court said:

" . . . But if Congress is acting within its bank-

ruptcy power, it may authorize the bankruptcy court to affect these property rights, provided the limitations of the due process clause are observed."

In *Union Land Bank v. Byerly*, 310 U. S. 1, the court considered whether the debtor had an interest in the land so as to bring it within the jurisdiction of the Bankruptcy Court, and in deciding adversely to the debtor, on page 10, said:

"* * * Since the foreclosure proceedings had been completed and title had passed thereunder prior to the filing of the debtor's petition for reinstatement, it would have been a vain thing to refer the cause to a conciliation commissioner for administration of property which no longer belonged to the debtor. * * *"

A reading of the cases leaves no doubt of the broad power possessed by Congress in the matter of bankruptcy legislation. The cases are just as convincing, however, that such power is limited to situations where the debtor has some right or interest in the property. Congress can, by legislation, protect, preserve and extend existing rights and interests, but it can not create property rights, nor can it revive an interest or right which has ceased to exist prior to the time a debtor comes into the bankruptcy court. It can administer to the patient as long as a spark of life remains, but when that spark is extinguished, its power no longer exists.

The construction which I place upon the paragraph would give every debtor the benefit of the Act so long as he owned any "equity or right" in the property. I would go no further. I think the action of the District Court was correct and that its order should be affirmed.

Endorsed: Filed Nov. 8, 1941. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the eighth day of November, 1941, the following further proceedings were had and entered of record, to-wit:

Saturday, November 8, 1941.

Court met pursuant to adjournment:

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Sherman Minton, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellants,

7574 vs.

State Bank of Hardinsburg, *et al.*,
Appellees.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Indiana, New Albany Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and that this cause be, and it is hereby, remanded to the said District Court.

And afterwards, to-wit: On the third day of December, 1941, there was filed in the office of the Clerk of this Court, a petition for stay of mandate, which said petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of Chancey Ray Brown and Mary G. Brown, Debtors. _____ Chancey Ray Brown and Mary G. Brown, Appellants, vs. State Bank of Hardinsburg, Appellee.	}	No. 7574.
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PETITION OF APPELLEE FOR STAY OF
MANDATE.

Comes now the appellee, State Bank of Hardinsburg, by its attorney, Telford B. Orbison, and moves the Court for stay of mandate, and in support thereof says:

That appellee has determined to file a petition for certiorari with the Clerk of the Supreme Court of the United States relative to the judgment of this Honorable Court handed down on the 8th day of November, 1941; that appellee's attorney has directed the Clerk of this Court to prepare the record of the proceedings in this Court, for the purpose of enabling appellee to file said record with the Clerk of the Supreme Court of the United States, as required by the rules of that Court; that in the opinion of said attorney said certiorari petition, said record and the brief in support of said petition will be placed on file with said Clerk of said Supreme Court within thirty days from date.

Wherefore, appellee prays for stay of mandate for a period of thirty days from date.

State Bank of Hardinsburg,
Appellee.

By Telford B. Orbison,
Its Attorney.

Order Staying Mandate.

State of Indiana }
 County of Floyd } ss.

Telford B. Orbison, being first duly sworn upon his oath deposes and says:

That he is the attorney for the State Bank of Hardinsburg, the appellee in the above entitled cause, and that the allegations stated in the foregoing petition are true.

Telford B. Orbison.

Subscribed and sworn to before me this 2nd day of December, 1941.

(Seal)

Mildred Hostettler,
Notary Public, Clark County,
Indiana.

My commission expires July 11, 1943.

Endorsed: Filed Dec. 3, 1941. Kenneth J. Carrick,
 Clerk.

And on the same day, to-wit: On the third day of December, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, December 3, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
 Debtors.

Chancey Ray Brown, *et al.*,
Appellants,

7574

vs.

State Bank of Hardinsburg, *et al.*,
Appellees.

Appeal from the District Court of the United States for the Southern District of Indiana, New Albany Division.

On motion of counsel for appellee State Bank of Hardinsburg, it is ordered that the mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed (except briefs of counsel, and order relative to briefs) in the following entitled cause:

Cause No. 7574

In the Matter of

Chancey Ray Brown and Mary G. Brown,
Debtors.

Chancey Ray Brown and Mary G. Brown,
Appellants,
vs.

State Bank of Hardinsburg, et al.,
Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 22nd day of December, A. D. 1941.

Kenneth J. Carrick,

(Seal)

Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 30; 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1334)